

20th December 2011



Committee Secretary
Parliamentary Joint Committee on
Corporations and Financial Services
PO Box 6100
Parliament House
CANBERRA ACT 2600

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Dear Sir/Madam

**Re : Corporations Amendment (Future of Financial Advice) Bill 2011
Corporations Amendment (Further Future of Financial Advice Measures) Bill 2011-12-11**

Thank you for the invitation to make a submission to this inquiry.

Background

In 2009 my business partner, Anthony Menico, and I joined with Matthew Parrish to purchase the financial planning of Fred Parrish, allowing Mr Parrish to retire. We have 1,110 clients serviced by a total of 13 staff. As is typical of a rural area, our clients needs range from simple savings and debt reduction strategies to superannuation, margin lending, business planning, insurance, retirement, estate planning and eventually aged care strategies. Therefore we have been required to obtain specialist qualifications for a range of advice areas. Many business coaches have urged us to specialise in one area to enable economies of scale, however we do not feel that this is possible in a small city like Cairns. We have an obligation to service our clients well and this often involves many generations of the one family.

You would be aware that many Cairns locals were impacted by the demise of Storm Financial and we volunteered our services to assist those who requested help. We had been concerned about their advice model and in 2005, prepared an analysis of the strategy which, I believe, was channelled through to ASIC. In previous years we had also been involved in stopping two illegal investment schemes – Piet Walters and Elizabeth Parry – as well as providing assistance to the victims of their "advice". So we have a great interest in making sure the Financial Planning is as robust and ethical as it can be.

However, we are also concerned about the plethora of rules that makes it difficult for good planners to provide service to their clients and the unconscionable to operate around the regulations.

Below I have raised my key concerns with the reforms contained in the two FOFA Bills which have been introduced into Parliament. Broadly, my concerns highlight the significant cost and complexity which these reforms (as currently proposed) will introduce into the financial planning process, especially for a practice such as ours. Whilst I fully support increasing standards and maintaining trust and confidence in financial advice, in general I do not believe the reforms currently strike the right balance between the introduction of appropriate regulation and increasing access to affordable, quality financial advice.

1. Corporations Amendment (Future of Financial Advice) Bill 2011

(a) Annual Fee Disclosure - Object

- (i) Cost. The following table details our estimate of the costs (note that this is just covering wages and business expenses only). It costs \$11 just to post a letter and over half of our clients do not have email addresses. Remember that this cost will ultimately be borne by the client.

SERVICE / FUNCTION	No. Clients	Adviser Time (hours)	Paraplanner Time (hours)	Support Staff Time (hours)	Labour Cost	Printing & Postage	Total Cost
Detail							
Annual fee and service notice	1110	0.10	0.10	1.00	\$123,593	\$1.31	\$125,048
TOTAL COST PER CLIENT							\$113

- (ii) Time. As it is, we have difficulty in providing as speedy advice as our clients would like. Making sure that every piece of advice is compliant takes time and considerable resources.
- (iii) In order to effectively monitor that everyone has received an annual notice, we anticipate that this will need to be done at one time. Assuming that the total time to prepare the invoice (collate data, check data, prepare notice, address and post) is around 30 minutes, then this is a total of 69 days for one person. That will mean that we have to allocate several staff members to do this.
- (iv) Our income is derived from many different sources so it will be necessary to collate a lot of data.
- (v) Client strategies can change significantly from year to year and therefore the estimate of fees for the forthcoming year could be irrelevant.
- (vi) Annual fees are already disclosed. Every piece of advice for a client reiterates the fees that we receive. However, advice may not be done within the 12 month time frame required by the legislation.
- (vii) Product manufacturers confirm the income paid to advisers directly to the client on an annual basis.
- (viii) We cannot just give it to the client at every meeting and they may be outside the time frames prescribed. This is also the case for Opt-in (below). Additionally, many clients are remote or live elsewhere in Australia so we conduct reviews via the phone.
- (ix) Some may avoid the obligation altogether by charging high upfront fees similar to Storm.

(b) Fee Disclosure and Renewal Notice - Object

- (i) Objection to disclosure noted above.
- (x) Renewal notice creates danger that clients will not return the document mainly because they are already overloaded with mail. Therefore they could become inadvertently unprotected by ongoing advice. Please note that currently we have difficulty in getting Binding Death Nomination Forms back from clients – and that is to benefit their families directly. We have found that it usually takes several phone calls and often forms have to be sent out several times. During harvest or planting seasons it is impossible to get hold of farmers.
- (ii) Again more cost. You can add in a further \$20 per client if required to be followed up (see above).

- (iii) Even more cost if they do not opt-in. The costs associated with terminating the relationship would be borne by the remaining clients in reality – it would need to be built into ongoing fees.
- (iv) Clients can opt-out instead. It would be more cost effective and provide Australians with greater choice if this method were promoted.
- (v) Too prescriptive. Clients do not have choice regarding how they do business with their planner – they are locked into a two year contract by law.

(c) ASIC Extension of Powers - Concerns

In general I agree that ASIC needs greater powers to avoid the debacles we have seen to date. However, having been closely involved with the Heather Parry case (where ASIC investigated and effectively gave the accountant a “clean bill of health” only to have the new owner report the transgressions to the Police within hours of taking over the business) I hope that skilled financial planning investigators will support this system. I believe that the best method of regulating our profession is by compulsory membership of a professional body which has the power to then discipline or de-license.

2. Corporations Amendment (Future of Financial Advice) Bill 2011

(a) Best Interest - Concerns

I believe that we already abide by this. My only concerns are:

- (i) How scaled advice can work in this regime given the requirement to enquire further. For example, where a client requests that super is rolled over. As part of this you will get details of their insurances and given that Australians are notoriously under-insured, in most circumstances you will need to provide insurance advice as well, which they often do not want.
- (ii) That this be applied to all providers of advice (ie including superannuation funds). For example (this is an actual case), where a client rings a super fund and wishes to withdraw their funds as they have a terminal illness. In this case the super fund provided the advice on withdrawal (ie conditions of release) without advising the client that they could have applied for the payment of the insurance contained within the fund. Of course, upon withdrawal, the insurance was lost.
- (iii) The “catch all” clause in 961B(2)(g) “...if the provider proves that the provider has done each of the following:” ... “taken any other step that would reasonably be regarded as being in the best interests of the client, given the client's relevant circumstances.” This could mean anything.

(b) Ban on Conflicted Remuneration - Concerns

- (i) Surely the Best Interest rules would negate the need for this.
- (ii) “Volume bonuses” reflect the amount of administration that we do on behalf of the platform. In reality, we use three platforms, which is at the maximum range of what a business can handle. Our commitment to a platform is based on flexibility and cost for our clients, and enables us to understand the system thoroughly so that we can act efficiently (such as in the opening days of the GFC where funds were closing). It is not easy for a business to change platforms or indeed to utilise several as they all have a different set of operating methods. The funding then allows us to subsidise client fees.
- (iii) Insurance under superannuation is a core part of many clients' strategies, enabling them to free cashflow for debt repayment, etc. To ban commission received from insurance under super will mean that the client needs to pay for our services from their own cashflow which may lead to further underinsurance problems due to affordability.

- (iv) Professional Development. To limit this to Australia and New Zealand is also limiting the effectiveness of that education. Recently we visited several businesses in Hong Kong and had access to some world leaders in financial planning and investment. In particular I recall a meeting where we had several members of an investment team for China and Asia, enabling us to ask questions directly and gain greater insight into the region which helps form our views on investor strategies. If this were held locally, the amount of contact would be limited and ergo the knowledge gained also limited. We also had people from London and the US. Their time commitment to fly to Australia or NZ is very different.

(c) Ban on Volume-based Shelf-space Fees - Concur

From our perspective, we want to see products in platforms that are the best for our clients and not there because of influence.

(d) Ban on Asset-based Fees on Borrowed Amounts - Object

I believe that this is an unnecessary measure that will add unnecessary complexity and cost, with many ways of avoiding the breach of regulations but coming out with the same result. I do not believe that it would either improve advice or lessen the risk.

- (i) Advice on borrowing to invest has already been tightened, particularly in relation to margin lending.
- (ii) This type of advice does represent more risk for both the client and the planner, therefore fees need to reflect this.
- (iii) Fees charged on "non-borrowed" amounts may be ramped up to cover the cost.
- (iv) Asset values change daily. How is this to be administered? The Loan to Value Ratio (LVR) may start at 50% (ie 50% borrowed, 50% savings), so the asset based fee is charged on the 50% of investor contribution. Then the LVR rises to 60%. Ergo, the asset based fee is in breach of the regulations.
- (v) Clients may be charged large up-front fees, similar to Storm, to provide ongoing service.
- (vi) Clients may be charged large ongoing flat-fees, indexed or changed each year.

Again, thank you for this opportunity to comment on the proposed regulations and I would be most happy to provide you with any further information you require. Senator Jan McLucas has indicated that she would like to visit our office to give her greater understanding of how Opt-in would impact our business however as yet her schedule has not enabled this. However, we would welcome anyone who would like to see how a financial planning business operates.

Yours faithfully

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