FSU AUSTRALIA

Submission:

Inquiry into proposals to lift the professional, ethical and education standards in the finance services industry.

FINANCE SECTOR UNION

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SUBMISSION TO THE PARLIAMENTARY JOINT COMMITTEE ON CORPORATIONS & FINANCIAL SERVICES:

Inquiry into proposals to lift professional, ethical and education standards in the finance services industry.

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1. FSU About:

The Finance Sector Union (FSU) of Australia welcomes the opportunity to contribute to the 'Inquiry into proposals to life the professional, ethical and education standards in the Finance Services Industry.

The FSU represents and advocates for more than 400,000 workers in the finance sector - including those who are required to provide general and personal advice.

As long term advocates, the FSU holds the view that employers in the Australian financial sector have social obligations to the Australian community in additional to their legal requirements & economic and commercial roles. The FSU's Our Jobs Our Future campaign seeks to turn this view into secure jobs, secure pay and a finance sector we can all be proud of.

As with any finance products, Australians should feel confident that the financial advice, products and services that are recommended are only recommended when there is a genuine need. Furthermore those recommendations should be only provided by those who are suitably qualified and trained to meet customer's best interests.

2. Terms of Reference items:

- The adequacy of current qualifications required by financial advisers
- The implications, including the implications for competition and the cost of regulation for industry participants of the financial advice sector being required to adopt:
  - Professional standards or rules or professional conduct which would govern the professional and ethical behaviour of financial advisers; and
  - Professional regulation of such standards or rules; and
- The recognition of professional bodies by ASIC

3. Submission statement:

Our submission to the Inquiry includes the thoughts & experiences of FSU members as well as recommendations based on the FSU's well placed understanding of the industry and industry practices, including elements pertaining to the minimum educational requirements to be able to provide meaningful and qualified advice.

The FSU will also reference the findings from the recent Financial Systems Inquiry (FSI) Interim Report as well as providing the FSU's "Australian Banking Principles".

These principals formed part of the FSU Submission to the FSI and are equally relevant to this Inquiry for consideration.

This submission does not address in detail all points in the Terms of Reference, but focuses on the key areas most relevant to the Finance Sector Union.

4. "Australian Banking Principles"

Like all other stakeholders, the FSU wants our finance sector to be as profitable and successful as it can be, but not at any cost.

To this end the FSU has been discussing with a number of consumer and community sector organisations[1] the sort of principles we believe we need to be the hallmarks of the finance sector in Australia.

These principles we believe provide the basis for the finance system in this country (including financial planning) and should guide the Parliament when forming outcomes from this Inquiry.[2]

Principles

Australia's financial system should function in an accessible, affordable and fair manner reflecting its status as an essential service. The financial sector should deliver products and services which better balance the needs of consumers, employees, shareholders, the economy as a whole and the broader public interest.

To achieve an effective, well-functioning financial system in the best interests of the Australian community through:

1. *Promotion of competitive outcomes for consumers*
    - 1.1. Shopping around and switching provider should be easy
    - 1.2. New market entrants should be encouraged
    - 1.3. All market participants should enjoy a level playing field
    - 1.4. Financial institutions should not be allowed to have excessive market power
    - 1.5. Regulators should investigate and respond proactively when problems arise

[1] Australian Financial Integrity Network (http://ausfin.org.au/)
[2] http://ausfin.org.au/wp-content/uploads/2011/02/AusFIN-Charter-Final-Nov-2010.pdf

2. *Effective regulation to support fairer outcomes, especially in essential services such as retail banking and superannuation*
    2.1. Financial services should be accessible and affordable for all consumers,, regardless of their circumstances or location
    2.2. Fees and charges should reflect cost only
    2.3. Financial products and services should be provided transparently, responsibly and with a duty of care to all stakeholders

3. *Community access to information about key elements of our financial system*
    3.1. Key information about Australia's financial system, including information about the size, nature and structure of financial institutions, levels of prices and fees in the market and wholesale costs, should be transparent and published regularly by our financial regulators

4. *Removal of all conflicts of interest*
    4.1. Financial providers should act in the best interests of their customers and clients
    4.2. Practices and structures that generate conflicts between the interests of financial providers and their customers should be eliminated

5. *Balancing the operation of the financial system with the needs of the community*
    5.1. Policy development and implementation on financial services issues should include the voices of all groups in the community who are affected
    5.2. Reflecting social and economic obligations, financial providers should strive to be Australia leaders in standards of corporate governance and behaviour
    5.3. The financial services industry should contribute to the development of the nation's skills and knowledge and the growth of sustainable and socially responsible local jobs

5. Best Interests

Australian financial organisations are some of the most profitable organisations in the world – many recognised globally for their success. When the GFC took hold, these same organisations operated with the support & faith of the Australian public & Government backed guarantees to minimise any potential damage.

Each year, these same Australian financial organisations who weathered the GFC storm with public support, continue to strive towards increasing their yearly profits.

This urgency to build upon and improve each year's returns has placed additional pressures on organisations to explore alternate avenues of income – especially high yield products that fall outside of traditional sources such as consumer and secured lending products.

The result has seen financial planning services became a vital and thriving income stream for many financial organisations, with the appearance of financial planning services rivalling lending as an income source for some organisations. This push for growth has put the pressure squarely back onto the shoulders on many finance sector workers to secure potential consumers for planning evaluations and product profiling. Exercises which are far more target and income driven than based in client best interests.

With more and more Australians looking for investment opportunities, including superannuation, the quality and transparency of the advice generated for securing a strong investment is becoming paramount. Having a product (or a line of products) where there is considerable financial benefit to the licensee/provider fosters an environment of interpretation as to what client 'best needs' looks like.

In very real terms, a client who receives poorly considered advice or, advice that has not been generated with the clients best interests, may be placing at risk their financial future & security. In such instances, the ramifications of when things go wrong are seldom localised – usually the impact is more broadly felt through the wider community, which in turn can create additional and substantial pressures on Government services.

The recent FSI, which had a wide variety of submissions presented, also flagged commentary relating to the nature and integrity standards of financial planning.

The recent FSI interim report makes the following observation:

> *'Affordable, quality financial advice can bring significant benefits for consumers. Improving standards of adviser competence and removing the impact of conflicted remuneration can improve the quality of advice. Comprehensive financial advice can be costly, and there is consumer demand for lower-cost scaled advice.'*[3]

The introduction of FOFA (Future of Financial Advice) by the previous government saw a move to fee-for-service structures based on best interest duty and a move away from conflicted remuneration[4].
This step opened the doors to client confidence and client clarity about the transparency of the planner/client relationship, and, that 'best interest' needs was the only influence to planning recommendations.

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[3] 3-63 Financial Services Inquiry Interim Report
http://fsi.gov.au/files/2014/07/FSI_Report_Final_Reduced20140715.pdf
[4] Division 2 of Pt 7.7A of *The Corporations Act*

Recently announced changes to FOFA which, while prohibiting the payment of upfront and trailing commissions for general advice, would allow for incentive payments in many situations. Added to this is the removal of 961B (g2)[5] from the acct which only serves to further dilute the best interest duty by removing steps in the best interest process.

While the media has recently reported on elements of questionable practices in the financial services industry, the FSU has examples of conflicted interest with employees who work in the home lending sector of the banking industry.
In one area it was reported that once a lender has approved a home loan application for a client the lender may in fact lose a percentage of any applicable bonuses if:

- The client does not have an appointment with the financial planner to discuss any potential needs; and
- Further bonus reductions may also apply if that same client does not take up a particular product as recommended by the planner.

It has also been reported to the FSU that one of the measures used by a licensee to gain the highest probability of sales success in a financial planning interview is to have the mortgage lender, with whom the client has had the initial relationship, 'sit in' on the interview. A method which appears on the surface to imply there is a necessity for the consumer to take up the financial advice product as part of the loan arrangements.
As the planner would already have details on the client's banking and lending arrangements it's hard to place another rationale for the lenders presence at the interview.

The FSU also makes reference to the following statement from the FSI report:

'Conflicts of interest have been a longstanding issue in financial advice.
There has been a tension between providing financial advice for the benefit of consumers and the product distribution role played by advisers.
Shadow shopping studies carried out by ASIC found a strong relationship between advisers giving non-compliant advice and conflicts of interest in business models. ASIC's submission argues that, in recent cases of substantial consumer loss, conflicts of interest held by financial advisers have often been a driver.'[6]

The FSU recently engaged NAB Financial Planners during the 2014 NABFP Enterprise Bargaining Agreement (EBA) negotiations – with particular purpose to review and comment on the remuneration model NAB were looking to implement.

[5] Corporations Amendment (*Further Future of Financial Advice Measures*) Act 2012
[6] 3-63 Financial Services Inquiry Interim Report
http://fsi.gov.au/files/2014/07/FSI_Report_Final_Reduced20140715.pdf

Financial planners graded their concerns and individual priorities and highlighted two key areas of concern:

- The impact of changes on my salary; and
- The focus on new business revenue to be eligible for incentive payment.

Additionally financial planners also provided comments in relation to the new proposal:

"The focus shifting from long term existing clients to chase new clients."

"The single biggest issue is Management's blatant refusal to acknowledge legitimate work performed for existing clients. It is extremely disappointing that management so callously disregard existing client relationships that have been developed over many years because of the total emphasis placed on new client revenue."

"NAB does not seem to care about existing clients and the time it takes to maintain a good relationship. They seem to be more focused on new revenue".

The summary feedback from members to the FSU is that customer needs are not always the key driver or consideration in all circumstances where financial planning is undertaken. The above comments serve to illustrate this - providing thoughtful insight from workers at the 'coal face' into the priorities financial organisations appear to have when it comes to matching customer needs and business growth models.

While the Ripoll Inquiry into Financial Products and Services is now a few years old, the following statement Q Invest made reference to in their submission is equally as applicable today as it was then:

"It is indeed a truism that —No man can serve two masters – and this is more so in the financial planning industry. As an industry, financial advisers are at a crossroad and each of us needs to honestly decide: Who is our master – the client or the product issuer? Experience has shown us that attempting to serve both places the financial planner in an untenable position." [7]

[7] Q Invest, Submission 374, p. iii. To the Ripoll Inquiry

6. Qualifying Standards

While there are minimum requirements outlined in the ASIC Regulatory Guide 146 (RG146)[8] to offer financial advice, the FSU raises concerns about these minimum standards, the exceptions and the relative benchmark this means in real world application.

The benchmark for entry and the ongoing education standards play a crucial role given the extensive range of possible product options and services available in the market that consumers may seek advice for.
Feedback to FSU suggests that skill and competency levels appear to vary even within the same financial services organisation which raises additional concern about the skill levels currently held by advisers across the entire industry.

In conjunction with operating free from conflicted interest, all consumers would benefit from access to a transparent, well-educated financial planning system where advice comes from those who receive regular training, regular review and are monitored through higher rates of policing than current standards.
In addition to the above, having a resource (such as a registered list of Financial Planners) available to the general community which details all currently 'licenced to practice' financial planners would assist in consumers in making educated choices & also serve as a means to monitoring regulatory training expectations.

Currently RG146 places the onus on licensees to implement policies and procedures to ensure they and their advisers undertake continuing training. These policies and procedures can vary from organisation to organisation and inherently create standards that are inconsistent across the nation.
While there may be localised value in creating these at an organisational level, creating national requirements and expectations removes any localised interpretation and facilitates national enforceable standards consumers can refer to.

It is also of note that, dependent upon the natural person's role; RG146 also offers exemptions from completing the full training standards - in certain circumstances it's a situation that could also potentially lead to unchecked policies & practices.

The FSI interim report details the following comments, in particular to Self-Managed Super Funds (SMSF's):

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8 http://www.asic.gov.au/asic/asic.nsf/byheadline/Regulatory+Guide+146%3A+Licensing%3A+Training+of+financial+product+advisers?openDocument

'Marketing and financial advice are encouraging individuals to establish SMSFs. According to Investment Trends, major reasons for establishing an SMSF include Accountants' advice (30 per cent of respondents) and financial planners' advice (20 per cent of respondents).

However, the quality of advice varies. ASIC's 2013 review of SMSF advice, as discussed in the Leverage section, found that around 1 per cent of advice provided was considered 'good' and around 28 per cent was rated as 'poor'. Concerns about the quality of financial advice are discussed further in the Consumer outcomes chapter, including policy options to raise standards in the financial advice industry. The SMSF Professionals' Association of Australia notes:

> *We believe that there could be some improvements to the current financial advice environment to protect consumers and promote high quality, independent financial advice.'*[9]

Generally speaking, there is public perception that financial planners, regardless of the organisation they work for, are independent, and only make recommendations based on the entire suite of options available – not just what may be on offer at the organisation the planner works for or what products may be of financial benefit to the licensee.

In perhaps a telling argument of its own given the age of the Ripoll report, there is still space between consumers' needs and the first recommendation put forward by the Ripoll Report back in 2009:

Recommendation 1

The committee recommends that the Corporations Act be amended to explicitly include a fiduciary duty for financial advisers operating under an AFSL, requiring them to place their clients' interests ahead of their own.[10]

7. Industry Practice

It is common practice throughout the financial sector for significant numbers of employees to have their wages and conditions outcomes (and in some cases – their employment) predicated on employer imposed sales targets associated with the sale of products. This fact alone exposes the planner (regardless of their qualifications) to potential pressure to meet objectives against the need for client 'best interests'.

[9] 3-63 Financial Services Inquiry Interim Report
http://fsi.gov.au/files/2014/07/FSI_Report_Final_Reduced20140715.pdf

[10] Ripoll report page150
http://www.aph.gov.au/binaries/senate/committee/corporations_ctte/fps/report/report.pdf

The FSU contends that target driven practices encourages a culture of product pushing onto consumers, with little regard for whether it is right for the consumer or whether they can afford it.

Financial planning, not unlike a full medical examination, has the consumer fully exposed for review and it's a trust that should not be sullied by conflicted interest or lack of an educated mind.

The FOFA reforms began the process of opening the door to ethical, transparent and cost effective financial planning – to enable Australians to make an informed choice about their investment future.

The recent well publicised case at the Commonwealth Bank of Australia (CFP & Financial Wisdom) relating to practices within the financial planning arm highlights the need for such reforms as well as tighter, more controlled measures of accreditation, accountability and transparency for consumers – the best interest test.

Notably the ramifications from that CBA matter, a situation left unchecked by the bank for many years, plays out as a cost to the wider community – including the current Australian Treasurer's, Mr Hockey's mother in law, who claims to have experienced losses based on advice received by CBA advisers.

These events have forced some businesses to review their current practices. For example, AMP announced in August 2014 a move for all of its financial planners to hold post graduate degrees.

> *'All existing and new AMP advisers must hold post-graduate qualifications such as a Certified Financial Planner degree, a Fellow Chartered Financial Practitioner or a Masters in Financial Planning.'* [11]

This push towards stronger education standards is also coinciding with the establishment of a Customer Advice Review panel at AMP. This panel will review customer complaints relating to Financial Planning and provide compensation to consumers where advice has been given that would be considered as 'not appropriate'.

AMP's decision follows a similar announcement by Commonwealth Bank (CBA).

While the move by some Licensees to self-impose higher education standards is a step towards having a better educated system, it would appear at a surface view these changes have been brought about to address the current public sentiment, in particular the distrust of financial planning, than to do with any genuine attempt by Licensees to better the integrity and transparency of the industry. The base entry point, RG146, can still be achieved in under a week.

[11] http://www.financialstandard.com.au/news/view/43031706

While increasing the qualification standards & requirements necessary to practice financial planning would be a positive outcome for many consumers, there is still the gap that an increased education standard would not address. The influence that conflicted remuneration models place on individuals when structuring advice plans for consumers also requires review and reform.
Delinking the planner/organisation from the financial benefits associated with 'specific' product sales fosters moves towards a level transparency which is not achievable by increasing the education or qualification standards alone.
The competency, transparency and overall integrity of any financial advice a consumer receives needs to match the inherent trust that is provided by consumers when they consult with a planner – especially when consumers are presenting their entire financial world and future.

Consumer sentiment on the matters of 'trust' and 'transparency' in relation to financial adviser can be further examined through a recent media article on the FSI in which the following statement was made:

Mr Murray's comments on Thursday coincided with a poll released by the Customer Owned Banking Association which showed 62 per cent of people have little or no trust in the big four banks to give independent financial advice, while 86 per cent think there needs a little or a lot more transparency and clarity regarding rates and fees. The findings show people are "confused and uncertain about the banking products they are investing in and the advice they are getting", said COBA acting CEO Mark Degotardi. [12]

8. Member engagement

Between 25th and 29th August 2014, the FSU sampled a small group of 29 Financial Planners to ascertain their particular views in relation to the terms of reference of this Inquiry.
The responses received are indicative of the need for further reform and regulation of the industry and, in particular, a move to securing 'best interest' practices for the everyday consumer.
Below are the key topics, questions and responses from the group:

Do you believe RG 146 is a satisfactory level of Qualification for a financial planner/adviser?	Yes 7	No 22

[12] http://www.smh.com.au/business/banking-and-finance/david-murray-signals-push-to-protect-clients-of-financial-advisers-20140821-106m25.html

As shown in the table above, staff working on the front line of the financial planning services industry have painted a very clear message about their view on whether minimum standard of RG146 is a sufficient qualification standard.
75 % of the participating industry planners simply said 'no'.

When prompted further about what they thought should be the minimum education standard there was also a clear theme – the essence captured in the table and the example quotes below:

If RG146 is not satisfactory, please describe the level that you consider to be adequate.	16 indicated tertiary/post graduate.

- *"University degree and minimum 5 years post graduate experience"*
- *"A degree at least"*
- *"Degree as well plus experience".*

Of the small percentage of planners who indicated they felt that RG146 was a sufficient benchmark (14%), there were also qualifying comments such as these:

- *"Yes for lower level. Senior Planners should have higher level"*
- *"For a Financial Planner / Senior Financial Planner providing Investment advice no RG146 is not enough. For an Adviser dealing purely in Risk Insurance and Risk Insurance alone Yes RG146 is sufficient."*
- *"Depends on what advice is being provided and training should be provided by the employer."*

This example serves to re-enforce that not only does the general consumer want confidence in the industry, those practising in the industry also recognise measures must be put in place to meet that expectation – not just for now, but ongoing in nature.

While opinion varied as to the frequency for ongoing training, some stating refresher courses should occur every 2-5 year intervals, 72% of the respondents agreed that ongoing training and education was needed. The prevalent view from the sample group was at least every 5 years planners should undergo required refresher education.

The results and sample comments below show the position on refresher training:

Should planners/advisers be required to undertake refresher education?	Yes 21	No 8

- *"Refresher training should be done on an ongoing basis such as through Continuing Education"*

- *"As much as there needs to be a raising of the bar of minimum educations standards for the FP profession, a focus needs to be made by Federal Govt regulatory bodies on the practices of the major FIs (who employ 80% of FPs) with their level of vertical product integration and 'hard sell' remuneration models that promote exceptionally poor practice standards. This point appears to be being missed in the current debate"*

9. Our Jobs Our Future

The FSU industry based campaign - 'Our Jobs Our Future' - represents a clear vision for what the Finance Sector should be, based on workers input across the industry.
The key points from this campaign (outlined below) are aimed at making the Finance sector as a whole, a better sector for the longer term – including financial planning:

- The development of a long-term financial services industry plan
- Tax incentives and disincentives to encourage companies to keep jobs in Australia
- The Government only procuring goods and services from companies that invest in local jobs and have ethical employment practices
- Customers deciding where their personal data is stored and accessed
- The extension of FOFA principles to all aspects of financial services and in particular, credit

While financial planning services are a relatively new player in the finance sector when compared to the histories of banking and insurance, it has the potential to cause devastating levels of disruption to the economic playing field of all Australians. This potential risk element expands immeasurably if regulatory steps are not applied with good measure and in good stead with the best interests of the consumer at heart.

The FSU would encourage the continued active consultation with all relevant players in seeking to address the matters discussed in this submission.

10. Recommendations

The FSU makes the following recommendations:

- Increase to the current education standards to include minimum tertiary qualifications
- Expand the minimum benchmark for entry onto the field (RG146) including a standardised National exam.
- Establish national consistency, approach and application to ongoing education requirements
- Create a national uniform Code of Conduct
- Require regular review & renewal of qualifications and capacity to practice
- Increase specialised training in key products including expanding the current 2 Tier structure and addressing specific needs such as Superannuation
- Create a national registrar of qualified practicing financial planners for community reference
- Have ASIC to act swiftly when investigating individuals and organisations and act appropriately to protect consumer interests and maintain the integrity of financial planning (including the immediate suspensions & removal of individuals from being able to practice or orchestrate financial planning activities).

For further information, please contact FSU National Infrastructure & Political Relations Manager Mark Gepp, [redacted] or [redacted]

Yours faithfully

Fiona Jordan
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Finance Sector Union of Australia

FSU
AUSTRALIA

OUR JOBS
OUR FUTURE