

Question No: 007
Reference: Page 51
Committee Member: Mr FALINSKI

Question:

Mr FALINSKI: I appreciate that. I don't know whether to refer to you as Chair Chester—that seems iterative. I will just call you Ms Chester, if that's alright with you. Thank you. While we're talking about the media, ASIC issued a media release on 5 November titled '20-270MR Former financial advisor convicted and fined \$30,000 for dishonest conduct' and refers to a Mark Damion Kawecki as being a financial adviser. I think it would be fair to say that referencing that Mr Kawecki was a financial adviser sends a message to consumers that they need to be cautious of people calling themselves financial advisers. My problem with this is Mr Kawecki—and I could be wrong on this, but I have had a look—doesn't appear anywhere on ASIC's AFSL register. He doesn't appear to have ever been registered as a financial adviser or planner, and he certainly doesn't appear on any register going back to 2015-16 when the contraventions took place. Do you think it's worth making it clear that when someone is fined in this nature that they're not a financial adviser so that we can instil in consumers confidence that when someone sees a financial planner or a financial adviser that they are registered and are subjected to some form of professional conduct and training?

Ms Press: I think the short answer to that question would be yes. I would like to take on notice the circumstances of that media release. To be honest, I don't have it to hand, as we do many of these, to ensure that that is correct. Certainly, on our Moneysmart website we are very clear to say that if you are looking for a financial planner that you should check the financial adviser's register to ensure that they are in fact a financial adviser.

Mr FALINSKI: When I raised this issue with a couple of people, one of them said to me that ASIC had actually referred to Mr Kawecki as a financial adviser in no less than three media releases in August 2019 and June 2018. If the parliament, if ASIC, if FASEA are going to go through the process of putting tens of thousands of people through onerous amounts of retraining and re-education to get to the point where they can call themselves financial planners and advisers, does it make sense for regulators to call people who never were financial advisers financial advisers?

Ms Press: I will need to take that on notice and have a look at the exact case. I'll come back to you to see why we had chosen to call him a financial adviser.

Mr FALINSKI: I understand that, thank you, but my broader question is a principle based one. If we are going to make people go through a whole period of training and education before they're allowed to call themselves financial advisers and, indeed, in many cases make people go through retraining who've been financial advisers for decades without anyone complaining about them, does it make any sense for us to not appropriately label people who are financial advisers financial advisers? You could get to the point of saying does it make any sense for us to call anyone a lawyer?

Answer:

We refer to ASIC's media releases regarding Mr Mark Damion Kawecki: [18-185MR](#), [19-209MR](#), [20-053MR](#), and [20-270MR](#). The title of these media releases referred to Mr Kawecki as a 'former financial advisor'.

Since 1 January 2019, there has been a restriction on a person (e.g. an adviser), or the person they are acting on behalf of (e.g. their AFS licensee), from using the term 'financial adviser', 'financial planner' or words of like import, in relation to the financial services they provide. This is specified in s923C and s1546C of the *Corporations Act 2001 (Act)*. This restriction was introduced by the *Corporations Amendment (Professional Standards of Financial Advisers) Act 2017*. The misconduct by Mr Kawecki occurred prior to 2019.

ASIC considers that its description of Mr Kawecki in the media releases as a *former* financial advisor describes his role during the period of his offending, which was prior to 2019. ASIC provides the following context to assist with understanding the role Mr Kawecki carried out:

- During part of the relevant period of Mr Kawecki's offending (between 19 January 2015 and 23 December 2016), Mr Kawecki was an authorised representative contracted to provide financial services on behalf of Fiscus Capital Pty Ltd (**Fiscus**), the corporate authorised representative of Nexia Corporate Melbourne Pty Ltd (**Nexia**), the holder of Australian financial service (**AFS**) licence 460701.
- Nexia's AFS licence authorised it to provide, among other things, financial product advice to wholesale clients in relation to securities. Fiscus, as Nexia's corporate authorised representative, was authorised to provide such financial product advice on behalf of Nexia. Fiscus, in turn, authorised Mr Kawecki to provide these services on behalf of Nexia. While working for Fiscus, Mr Kawecki's title was Advisor.
- Mr Kawecki had also been described as a former certified financial planner on the Fiscus website. ASIC records further show that Mr Kawecki had previously been a licensed Securities Representative, between January 1999 and January 2004 (predating the change in regime to make such persons Authorised Representatives).