

## PJC Inquiry into Financial Products and Services

**Table: Issues and Legal Context relevant to each Term of Reference**

Term of Reference (TOR)	Issues	Legal context
1. General Regulatory Environment (TOR 2)	1.1 What is the underlying economic policy of the relevant part of the Corporations Act?	1.1 'Efficient Markets Theory' (ie reliance on markets driving efficiency with intervention addressing market failures)/Wallis
	1.2 Given the economic policy, what is the underlying philosophy of ASLC's role?	1.2 'Efficient Markets Theory' (ie reliance on markets driving efficiency with intervention addressing market failures)/Wallis
	1.3 What alternatives are there to this approach to regulation?	1.3 Regulatory options involving more prescription/ protection of investors
	1.4 What would be the impact of the alternatives on the market?	1.4 Economic impact of alternative regulatory options
	1.5 Has the existing regime been applied to the maximum? Is there more ASLC can do?	1.5 ASLC's role: what we have done and will do and where the limits are
2. Adequacy of licensing regime (TOR 5)	2.1 What are the elements of the licensing regime?	2.1 Outline of the legislative requirements <ul style="list-style-type: none"> <li>• Who must hold a licence</li> <li>• Authorisations and conditions</li> <li>• What must licensees do</li> <li>• Cancellation, suspension or variation of licences</li> <li>• Banning of individuals</li> </ul>

Term of Reference (TOR)	Issues	Legal context
	<p>2.2 What is the role of licensing? What was it intended to do? Perception versus reality.</p>	<p>2.2 Outline of ASIC's role under the licensing regime</p> <ul style="list-style-type: none"> <li>• Obligation to grant a licence</li> <li>• Imposing conditions on a licence</li> <li>• Cancelling, suspending or varying licences</li> <li>• Banning individuals</li> </ul>
	<p>2.3 What was licensing not intended to do?</p>	
	<p>2.4 What are the options for change and their implications? For example</p> <ul style="list-style-type: none"> <li>• Increasing the threshold tests</li> <li>• Review business models</li> <li>• Re-orient to focus on the individual</li> </ul>	
<p>3. Role of Financial Advisers (TOR 1)</p>	<p>3.1 How does the financial advice industry work?</p>	<p>3.1 Outline of legal framework for regulation of advice</p> <ul style="list-style-type: none"> <li>• Definition of 'financial product advice'</li> <li>• Obligations of providers of financial product. <ul style="list-style-type: none"> <li>○ General licensee obligations</li> <li>○ Obligations of providers of personal advice</li> <li>○ Obligations of providers of general advice</li> </ul> </li> </ul>

Term of Reference (TOR)	Issues	Legal context
	<p>3.2 What is the difference between a financial adviser/planner and a distributor of products?</p>	<p>3.2 Difference between sales, general advice and personal advice at law</p> <ul style="list-style-type: none"> <li>• Definition of personal advice</li> <li>• Definition of general advice</li> <li>• Sales role of advisers</li> </ul>
	<p>3.3 What is the level of quality of advice?</p>	<p>3.3 Legal standard of quality</p> <ul style="list-style-type: none"> <li>• Duties owed by advisers – suitability rule</li> <li>• Training requirements</li> </ul>
	<p>3.4 Who has access to advice and who does not?</p>	
	<p>3.5 What are the options for change and their implications?</p> <ul style="list-style-type: none"> <li>• Can we increase access to advice?</li> <li>• Should advice be separated from sales?</li> <li>• Should advisers be required to act in the best interests of their clients?</li> <li>• Should the training standards/competence of advisers be improved?</li> </ul>	
<p>4. Role of commission arrangements for product sales and advice (TOR 3)</p>	<p>4.1 What are the current remuneration structures in the advice industry?</p>	<p>4.1 Outline of law on remuneration</p> <ul style="list-style-type: none"> <li>• Disclosure of remuneration <ul style="list-style-type: none"> <li>○ Financial Services Guide (FSG)</li> <li>○ Statement of Advice (SOA)</li> <li>○ Product Disclosure Statement (FSG)</li> </ul> </li> <li>• Obligation to manage conflicts of interest</li> </ul>



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	<p>4.2 What are the options for change and their implications? For example</p> <ul style="list-style-type: none"> <li>• Fee for service only</li> <li>• No trail commission</li> <li>• No upfront or limited upfront</li> </ul>	
<p>5. Appropriateness of information provided to consumers (TOR 6)</p>	<p>5.1 What are the disclosure obligations?</p> <p>5.2 What has ASIC done on disclosure? How has it exercised its function?</p> <p>5.3 What are the options for change and their implications? (i.e. Can disclosure be improved? What are the options?)</p> <p>5.4 Where is the limit to disclosure? (i.e. do we need to move beyond the 'Efficient Markets Theory')</p>	<p>5.1 Outline of disclosure regime</p> <ul style="list-style-type: none"> <li>• PDS – point of sale disclosure</li> <li>• SOA – information about advice provided</li> <li>• FSG – information to allow client to decide whether to obtain a financial service</li> <li>• Periodic disclosure</li> </ul> <p>5.2 Outline of ASIC's role</p> <ul style="list-style-type: none"> <li>• Lodgment of a limited range of disclosure documents</li> <li>• In-use notices</li> <li>• ASIC action – stop orders</li> <li>• ASIC guidance</li> </ul>

Term of Reference (TOR)	Issues	Legal context
6. Role of marketing and advertising campaigns (TOR 4)	<p>6.1 Marketing and advertising campaigns by product issuers</p>	<p>6.1 Outline of the legal rules for product advertising and marketing</p> <ul style="list-style-type: none"> <li>• Identification of issuer and reference to PDS</li> <li>• Prohibitions on certain activity, including unconscionable, misleading or deceptive conduct</li> <li>• Hawking prohibition</li> </ul>
	6.2 Examples of such campaigns	<p>6.2 How does ASIC exercise its powers in this area</p> <ul style="list-style-type: none"> <li>• Remedies available to ASIC</li> <li>• ASIC campaigns</li> <li>• ASIC guidance</li> </ul>
	6.3 What are the options for change and their implications?	
	6.4 Can ASIC improve the standard of advertising using existing powers?	
7. Consumer education and understanding (TOR 7)	7.1 ASIC's work and what it has done	<p>7.1 Outline of legal requirements in this area and ASIC's role</p> <ul style="list-style-type: none"> <li>• Promoting confident and informed participation of consumers in the financial system</li> <li>• ASIC's activities <ul style="list-style-type: none"> <li>○ Initiatives to improve financial literacy</li> <li>○ Providing information and tools</li> </ul> </li> </ul>
	7.2 Role of industry	
	7.3 What more can be done?	

Term of Reference (TOR)	Issues	Legal context
8. Adequacy of PI insurance (TOR 8)	<p>8.1 History of the compensation regime and how it is working in practice</p> <p>8.2 What are the options for change and their implications?</p> <ul style="list-style-type: none"> <li>• Alternative compensation mechanisms and their cost.</li> </ul>	<p>8.1 Outline of legal requirements for compensation</p> <ul style="list-style-type: none"> <li>• Obligation to have compensation arrangements</li> <li>• Standard way to comply – PI insurance</li> <li>• Alternative compensation arrangements approved by ASIC</li> </ul>
9. Role of lending institutions (additional TOR)	<p>9.1 Role of asset value and leverage. How much has it been responsible?</p> <p>9.2 Role of financial institutions</p>	<p>9.1 Economist's view</p> <p>9.2 Outline of existing regulation of credit</p> <ul style="list-style-type: none"> <li>• UCCC – State and Territory regulation</li> <li>• ASIC Act</li> </ul> <p>9.3 Outline of proposed reforms</p> <ul style="list-style-type: none"> <li>• Consumer credit: new Commonwealth legislation</li> <li>• Margin loans: amendment to Ch 7, Corporations Act</li> </ul>
10. Need for regulatory reform (TOR 9)	<p>10.1 Do we need to reassess the balance between protection of investors and the 'Efficient Markets Theory'</p> <p>10.2 Options for reform</p>	<p>10.1 Linking options for reform to present policy settings</p>