

**SUBMISSION  
TO**

**PARLIAMENTARY JOINT COMMITTEE ON CORPORATIONS AND  
FINANCIAL SERVICES**

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**INQUIRY INTO FINANCIAL PRODUCTS AND SERVICES IN AUSTRALIA**

**By**

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Rather than highlighting a single issue – commission vs fees, training, education- I would like to address what I believe is the core problem that lies behind the current problems in the financial planning industry: the failing of the current regulatory system and the need for an integrated approach, rather than piecemeal additional rules and regulations.

First, I believe one should accept two ‘immutables’:

1. The perfect system doesn’t exist.
2. One cannot legislate against greed and wilful ignorance.

**A good Regulatory Environment for Financial Planning should have the following objectives:**

1. It should encourage professionalism and ethical behaviour
2. It should discourage dishonest operators
3. It should be transparent and relatively easy to maintain
4. It should encourage competition to the benefit of the client/consumer.

**Unfortunately, the current system fails on all objectives. Let me explain:**

1. *Would we contemplate a system that requires doctors to be employed or licensed by pharmaceutical companies before they can offer their GP services to patients? Of course not – quite rightly we would consider this notion to be ludicrous. Yet this is exactly the model which is in place for Financial Planners.*
2. The current system doesn’t discourage unethical and/or incompetent behaviour (Storm, Westpoint are just two of the many examples). The system is purely ‘process based’ and has nothing to do with the content of the advice. Provided a series of tick boxes has been ticked, pretty much anything goes. Consumers and advisers are buried under a mountain of paperwork just to meet the regulations. Statements of Advice run to 40, 50 sometimes 100 pages: a guarantee that no-one will read them!
3. The licensing system is far from transparent, and the same applies for the requirements regarding advice and the running of an advisory practice: ASIC isn’t able to provide any kind of uniform or consistent direction regarding say Statements of Advice, and the jungle of petty rules which even includes how to bind one’s files benefits no-one, certainly not the client (again, none of these rules prevent the Storms of this world).
4. Competition is stifled due to the dominance of large dealer groups, most of which are owned by product manufacturers. A ‘sell, sell, sell’ culture is stimulated and very large ‘dealer fees’ render responsible and professional client servicing extremely difficult. Direct licensing is expensive and complex and discourages smaller professional operators. It is both anti-competitive and anti-professional.

***Rather than having the wrong licensing system in place and then build up a plethora of rules and regulations to maintain a semblance of integrity, a simpler and more effective system should be implemented, which meets the objectives outlined above.***

Whilst vested interests (banks, fund managers, large dealer groups) undoubtedly will disagree, such system could be established quite easily, building on similar professional regulatory systems already in existence. There is no need to reinvent the wheel.

**This is a very brief outline of how a good Regulatory Environment could look like and how it would address the current problems:**

1. Financial Planners (FP for short) to be registered based on experience and education. The model that can be used is the new national Tax Agents' Board. If one meets the requirements, one can be registered at a nominal cost. The process is simple and fair.
2. An important part of this legislation focuses on mandatory membership of a Recognised Professional Body. Some already exist, such as CPA, NIA, ICA. The AFA, being a body consisting of advisers only, could probably easily convert. FPA would have more difficulty, but the problems would not be insurmountable. Others may emerge.
3. Each can set their own admission/education levels within the framework of the Recognised Professional Body rules.
4. Whilst minimum educational standards are welcome, I disagree that a higher level of education will solve any problems: sound financial advice is based on perhaps 20% education, 40% experience and 40% common sense. An unmeasurable ingredient is integrity.....Several Storm advisers were CFPs: so much for education!
5. As with accountants, solicitors, doctors the FPs' relevant professional bodies would have an audit/review system in place to ensure professional behaviour.
6. The Registration Board would have similar powers as the new Tax Agents' Board to keep FPs 'in line' and offer consumers redress in case of transgressions.
7. Only Registered FPs are to offer Financial Planning services.
8. Registered FPs can set their fees in the same way accountants or solicitors do, but are barred from taking commissions.
9. Reps from Banks and other 'product sellers' could revert to the old designation used in the past: 'agent for.....'. There is nothing wrong with that, as long as the consumer knows what to expect. It is up to their employer to decide on remuneration. However, it should not be permitted to be agent for more than one product/manufacture to avoid confusion with the consumer. *(this is not the place to go into exhaustive detail, but the gist is clear)*

The above would greatly enhance the entry and/or retention of real professionals in the FP industry, and at the same time restrict unsavoury behaviour.

However, this should go together with other reforms, some of which are suggested below:

1. ASIC to regulate all financial products AND take responsibility.
2. Investment product 'manufacturers' should be prohibited to pay commissions and other inducements, except possibly to their 'agents'. It doesn't make sense to allow commissions to be paid, and then set complex rules so one isn't influenced by them!
3. Any inducements based on volumes of sale paid by product manufacturers to be prohibited.
4. Outlaw the inherently dishonest practice of 'badging': selling products under another name. The only reason for this practice is to give the client another impression, ie to mislead.
5. Make a distinction between insurance products and investment products for commission purposes: given the inherent uncertainty regarding underwriting of insurance, commissions would be allowable (and disclosed). In many respects insurance is a very different product from investment products.
6. Here too, the regulation should prevent uncompetitive behaviour: force all insurers to deal with all Registered Financial Planners, without regard to volume. Modern computer systems can easily address any issue in this regard. This will give real professionals the opportunity to search the market for the best product for their client. Volume requirements should not be used as a pretext for anti-competitive behaviour.

## **Conclusion:**

In general, the focus of many discussions has been (and is) on Financial Planners, but many problems are the result of the 'system' within which planners are forced to work, and, dare we say it, of marketing techniques by the fund managers/product manufacturers, as well as essentially unsuitable products (the 'whole of life' insurance policies of yore were not invented by sales agents, but by actuaries and approved at the highest levels!). Duping consumers with 'Storm type' products cannot be blamed on planners alone: someone manufactured the 'product' and deliberately induced sales-driven people to flog them.

Any reform therefore should look at the three parts of this equation: the product manufacturers, the planners and the Regulatory Environment. Only an integrated approach will deliver the best results. The above pointers intend to assist with finding what I believe to be the right direction for such approach.

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