

Australian Institute of Superannuation Trustees



5 December 2014

Senate Standing Committees on Economics
PO Box 6100
Parliament House
Canberra ACT 2600

Email: economics.sen@aph.gov.au

Dear Sir/Madam

Re: Scrutiny of Financial Advice

The Australian Institute of Superannuation Trustees (AIST) is pleased to provide this submission to the Senate Standing Committees on Economics.

The Australian Institute of Superannuation Trustees is a national not-for-profit organisation whose membership consists of the trustee directors and staff of industry, corporate and public-sector funds.

As the principal advocate and peak representative body for the \$600 billion not-for-profit superannuation sector, AIST plays a key role in policy development and is a leading provider of research.

AIST provides professional training, consulting services and support for trustees and fund staff to help them meet the challenges of managing superannuation funds and advancing the interests of their fund members. Each year, AIST hosts the Conference of Major Superannuation Funds (CMSF), in addition to numerous other industry conferences and events.

In brief:

AIST welcomes this inquiry into the scrutiny of financial advice. AIST recommends higher education standards, ongoing professional development and independently regulated codes of conduct combined with better resourcing of regulators. Penalties for poor advice should be reviewed to ensure they better repair customer impacts. In light of recent scandals and the lack of consistency, consumers deserve better.

The environment within which Australia's financial planners operate

Before outlining AIST's responses to the Senate Standing Committee's specific questions, AIST wishes to state the overarching environmental context within which financial planning within Australia operates:

- According to the Customer Owned Banking Association, Australia has the most concentrated banking sector of any G20 country¹.
- Rainmaker notes that the four largest banks, their wealth arms and AMP have coverage of over 55% of all financial planners and 79% of all platform advisers².
- Of the approximately 18,000 financial planners, less than one-third are certified financial planners³, which among other things requires an approved tertiary degree.
- Such conflicts of interest have detrimentally flowed onto consumers in various financial planning scandals, including in recent times the Commonwealth Bank and Macquarie Bank.

Structurally, it is difficult to ensure that consumers are as fully protected as they should be, given the structural conflict of interest arising from not having a clean separation of banking from wealth management.

This structural conflict, combined with having a compulsory superannuation system in Australia, drives the following:

- There is a need for legislative prescription to protect consumers.
- The role of the regulators is critical in ensuring that consumers are adequately protected given the existing inherent structural conflicts.

Additionally, Australia has a predominately defined contribution system where the burden of fees and risk (including investment risk) is borne by the consumer.

AIST now turns to addressing the particular issues raised by the Senate Economics References Committee.

(a) The current level of consumer protection is insufficient

AIST believes that the current level of consumer protection is insufficient. Even the recent FoFA amendments do not address:

- The need for standardised education levels for financial planners.
- The need for transparent, prescriptive standards of ethics.
- The impacts of the structural conflicts of interest.
- The lack of resources within the regulators.

¹ Williams, M. (2014). Too-big-to-fail banks getting bigger. *AB+F*. [online] Available at: <http://tinyurl.com/pvbdmfl> [Accessed 5 Dec. 2014].

² Rainmaker's Financial Planning Report, Volume 3, No.1 February 2014

³ Ferguson, A. (2014). New battle looms as Treasury waters down financial adviser register. *The Age*. [online] Available at: <http://tinyurl.com/m82xtre> [Accessed 5 Dec. 2014].

Need for standardised education levels for financial planners

AIST recommends that financial planners:

- Be tertiary qualified where giving personal advice.
- Complete a national exam for new and existing financial planners with mandatory competencies including ethics and conduct.
- Satisfy mandatory Continual Professional Development requirements.

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AIST welcomes the Government's commitment to a national register of financial planners which will include qualifications and membership of professional bodies. Disclosure of what qualifications financial planners have is important – but the level of qualifications financial planners are required to have is far more important.

AIST notes that the United States, the United Kingdom, Canada, Singapore and Hong Kong all have national examination approaches to adviser competency.

Superannuation in Australia has over \$1.8 trillion, and yet those giving consumers advice are not subject to consistent and transparent education requirements. And this leads to a lack of properly trained financial planners as well as an erosion of consumer confidence. To this end, AIST quotes an article by Adele Ferguson in *The Age* from 1 December 2014⁴:

The banking sector has proved to be a powerful lobby group. It knows the planning industry needs to lift its game, as outlined in a confidential report sent to Cormann just over a week ago into the professional, ethical and educational standards of financial planners. The working party, which included the banks' lobby groups, agreed the existing minimum education and training standards were inadequate and a "lack of consistent ethics and conduct standards causes divergences of practices across the industry" but they couldn't agree how to do it, which effectively ensures it won't proceed.

This points to the need for legislative prescription regarding qualifications and ongoing training.

The need for transparent, prescriptive standards of ethics

AIST recommends:

- The adoption of a uniform code of professional practice and ethics or an approved code of conduct compulsory for all financial advisers.
- Such a code could be developed under the operation of an ASIC regulatory guide.
- Any code must be independently determined, approved and monitored.

⁴ Ferguson, A. (2014). New battle looms as Treasury waters down financial adviser register. *The Age*. [online] Available at: <http://tinyurl.com/m82xtre> [Accessed 5 Dec. 2014].

AIST notes with concern that there is no uniform professional code for financial planners. Given the inherent structural conflicts involved in the financial planning sector, AIST strongly contends that a voluntary code would not provide consumers with adequate protection. Such a code should be separate to membership of a professional body. Given the public scandals and the erosion of consumer confidence, AIST suggests that such a code could be developed under the operation of an ASIC regulatory guide.

Mitigating the impacts of the structural conflicts of interest

At the heart of financial planning scandals has been the issue of conflicted remuneration. As mentioned above, this arises because of the institutional ownership of most of financial planning dealerships. Accordingly, AIST recommends:

- All forms of conflicted remuneration should be banned.
- Ongoing asset based fees be banned.
- That a distinction be drawn by legislatively distinguishing aligned financial planners and independent financial planners. Such naming will assist with raising consumer awareness about which financial planners are inherently conflicted.

(b) Role of, and oversight by, regulatory agencies in preventing the provision of unethical and misleading financial advice

AIST recommends the following:

- Stronger punishments are needed.
- A well-resourced and funded regulator is needed.

Stronger punishments

A concern privately raised with this organisation extends to the use of enforceable undertakings by the regulator. We note that as of today, 20 enforceable undertakings appear in the register for the year to date.

A member relates the following story:

[This is a story] from my own experiences at [redacted]. Nearly 200 members were rolled out of [redacted] based on false information provided by a financial planner. I went to ASIC to complain on behalf of [redacted]. ASIC said they couldn't act as they needed a member to make an actual complaint. It took a while to find someone to put pen to paper – even though members had been verbally complaining. The end result was an enforceable undertaking that the planner had to write to ex members and tell them (basically) that he had lied to them. Ex-members chose not to leave the planner. This led me to agree with other comments

about how enforceable undertakings are toothless (letters, all sound nice, etc) – a clear message needs to be sent so reality hits home.

We echo these concerns and suggest that stronger punishments may be more effective deterrents. Such stronger punishments may include the individual being placed back into the position they would have been but for the conduct of the financial planner.

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Regulator resourcing

Given the widespread nature of recent financial planning scandals and the impact on consumers' retirement savings, AIST notes with some concern that ASIC has reported only as recently as 21 October 2014⁵ that it will keep a close eye on the six largest financial advisers. ASIC comments that 'we remain concerned about the culture of financial services business, and the incentive structures they use ...' 'The welfare of their customers should be at the heart of their business.'⁶

AIST believes that in part ASIC's slowness to act has been caused by a lack of resources. AIST is therefore extremely concerned that the Federal Government is cutting funding to ASIC - \$120 million over the next five years. The Federal Government has signalled that it wishes to reduce the regulation of the financial services sector (including superannuation). AIST emphasizes its earlier points that given the risks placed on consumers and the inherent structural conflict of interest in the non-separation of banks and wealth management, prescriptive legislation and a well-resourced regulator is essential to having a strong, sound, and well-functioning financial sector.

(c) AIST supports OECD principles for financial consumer protection

In conclusion, AIST notes and supports the G20 High Level Principles on Financial Consumer Protection⁷, with particular reference to the OECD report on the work to support these Principles. AIST draws attention to the following in the context of financial planning advice to members:

- The oversight bodies should include having clearly defined powers, operational independence and accountability for their actions.
- Consumers should be treated fairly.
- Disclosure and Transparency Principle. The OECD report notes that consumers can be at a particular disadvantage when purchasing financial products or services, as they are widely marketed but purchased infrequently. AIST continues to endorse the disclosure of any

⁵ Wilkins, G. (2014). ASIC will keep a watchful eye on financial advice from six biggest planners. *The Sydney Morning Herald*. [online] Available at: <http://tinyurl.com/kv63hj6> [Accessed 5 Dec. 2014].

⁶ AAP, (2014). ASIC to monitor financial advice industry, concerned at culture. *The Australian*. [online] Available at: <http://tinyurl.com/mbluf2y> [Accessed 5 Dec. 2014].

⁷ G20 High-level Principles on Financial Consumer Protection. (2011). 1st ed. [pdf] Paris: Organisation for Economic Co-operation and Development (OECD). Available at: <http://tinyurl.com/lcklllz> [Accessed 5 Dec. 2014].



conflicts of interest, opt in to costs on a regular basis, and ensuring that at all times, the members' best interest is put first – as is recognised within the recent FoFA amendments.

- Responsible Business Conduct of Financial Services Providers and their Authorised Agents. This includes that organisations should:
 - Be accountable and responsible for the actions of their agents.
 - Have properly trained and qualified staff.
 - Agents should endeavour to avoid conflicts.
 - Ensure their remuneration structures are designed to encourage fair treatment of consumers.
- Protect consumers against fraud and misuse.
- Consumers should have access to an adequate complaints handling and redress mechanism that is accessible, independent, fair, accountable, timely and efficient.

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If you have any further questions regarding this submission, please contact Karen Volpato, Senior Policy Advisor.

Yours sincerely,

Tom Garcia
Chief Executive Officer