

Chapter 8

Education and culture

...where poor conduct leads to significant losses for investors, while markets can recover, quite frequently individual investors do not and do not have the capacity to.¹

8.1 In many ways, the problems associated with marketing and selling MIS have been addressed through reforms introduced since 2009. They include the FOFA legislation, which removed commissions and placed a heavy obligation on advisers to act in the best interests of their clients. There has also been a strong push for more professional and better trained and educated financial advisers.

8.2 In this chapter, the committee considers the importance of these reforms and, in light of the lessons to be drawn from the collapse of the high-profile MIS, whether any further measures are required to strengthen consumer protection. It looks at financial advisers and their qualifications, the overall culture that pervades the financial services industry and the banning of unscrupulous advisers. But firstly, the committee considers the investors themselves and how they can protect their own interests.

Financial literacy

8.3 Investors must take responsibility for the decisions they make. The committee has considered and made a number of recommendations designed to improve the reliability and adequacy of information provided to potential investors. Even so, the committee understands that investors need to have a certain level of financial literacy to make informed and considered investment decisions. CPA Australia noted that improving investors' financial literacy was integral to making better financial decisions. It stated:

Without an appropriate level of financial literacy, an investor cannot be in a position to make an informed decision even if they are presented with simple advice and disclosure documents. We acknowledge the work of ASIC and the industry in this regard, and understand that the value and benefits of greater consumer understanding is a long term goal to be achieved.²

8.4 In this context, the committee's inquiry into rates on credit cards underscored the importance of having a financially literate population.³ Evidence before that

1 Mr Greg Tanzer, *Proof Committee Hansard*, Inquiry into the Scrutiny of Financial Advice, 7 July 2015, p. 24.

2 *Submission 142*, p. [3].

3 Senate Economics References Committee, *Interest rates and informed choice in the Australian credit card market*, December 2015, pp. 72–77.

inquiry recognised that consumers are pitched against the resources and ingenuity of people with the knowledge and wherewithal to outwit them. For example, Mr Paul Clithero, of *Money Magazine*, noted that the individual consumer has no power against the behavioural marketing skills of a huge institution. Agreeing with the need to improve financial literacy, Mr David Koch, Finance Editor, Seven Network, noted that people are lured into behaviour by 'millions of dollars of research on how to get around financial literacy'. In his view, financial literacy has 'got to get aggressive' to combat this asymmetry of influence and information.⁴

8.5 The same compelling evidence arguing for the need to lift the financial literacy standards of Australians was presented to the committee's inquiry into recent land banking schemes. In this case, property spruikers employing sophisticated marketing techniques (celebrity endorsements, pressure selling) convinced retail investors, who were prevented from fully understanding what was being offered, to invest in high risk inappropriate schemes.⁵

8.6 Evidence before this current inquiry into MIS presented example after example of growers enticed into investing into agribusiness MIS by assurances that the schemes were practically failsafe and, moreover, under erroneous impressions about the soundness of their loan arrangements. Further, investors signed incomplete forms, did not read carefully the disclosure documents or question their adviser. Some attended promotional marketing events followed by pressure selling of products, which they understood were government endorsed.

8.7 ASIC provided the committee with examples of its efforts to lift the standard of financial literacy in Australia. It also highlighted the difficulty of doing so. In this report, the committee has made recommendations that would place obligations on product issuers and research houses to act responsibly in the promotion and marketing of MIS. Much more, however, is required to equip the investor to protect their own interests. The committee recognises that improved financial literacy will go some way to help consumers make informed decisions.

Recommendation 4

8.8 The committee agrees with the view that financial literacy has 'got to get aggressive' and recommends that the Australian Government explore ways to lift standards. In particular, the government should consider the work of the Financial Literacy Board in this most important area of financial literacy to ensure it has adequate resources.

8.9 Drawing on the lessons to be learnt from the evidence on the need to improve financial literacy in Australia, the committee also recommends that the

4 *Proof Committee Hansard*, Senate Economics References Committee, Inquiry into matters relating to credit card interest rates, 27 August 2015, p. 43.

5 Senate Economics References Committee, *Scrutiny of Financial Advice, Part 1—Land banking: A ticking time bomb*, February 2016, chapters 3 and 4.

Australian Government in consultation with the states and territories review school curricula to ensure that courses on financial literacy are considered being made mandatory and designed to enable school leavers to manage their financial affairs wisely. The course content would include, among other things, understanding investment risk; appreciating concepts such as compound interest as friend and foe; having an awareness of what constitutes informed decision-making; being able to identify and resist hard sell techniques; and how to access information for consumers such as that found on ASIC's website. Financial literacy should be a standing item on the Council of Australian Governments' (COAG) agenda.

8.10 Chartered Accountants Australia and New Zealand (CA) also recognised the importance of financial literacy but appreciated that improved financial literacy was only a partial solution. It noted the complexity of agribusiness MIS and the imbalance in information between consumers and financial system participants, concluding that consumer education was limited. Furthermore, it stated:

Similarly consumers' taking a greater responsibility for their investment decisions is beneficial but in the short term it is again limited. As a consequence there is greater responsibility and accountability required by the industry.⁶

8.11 While improved financial literacy is to be encouraged, it would only go part of the way to protecting consumers from investing unwittingly in risky products such as agribusiness MIS. One of the disturbing aspects of the accounts given by investors was the very fact that they realised their own limitations when it came to financial matters and sought out 'expert' advice. But, as mentioned above, consumers are pitched against the resources and ingenuity of people with the knowledge and wherewithal to outwit them and who, in some cases, hold themselves out as financial advisers: as professionals. Accordingly, financial advisers must be required to act in the best interests of their clients and be trained and qualified to do so competently.

Future of Financial Advice Reforms

8.12 In 2011, the parliament passed legislation, which took account of a variety of issues associated with corporate collapses, including Storm Financial and Opes Prime, and has direct relevance to the various MIS examined in this report. The implementation of the FOFA reform package was intended to improve the professionalism, quality and level of consumer trust and confidence in financial advice. It was to do so through enhanced standards that aligned the interests of the adviser with the client and by reducing conflicts of interest. In particular, it covered the provision of advice to retail clients of financial products, including agribusiness MIS.⁷ The legislation implementing the reforms—the *Corporations Amendment (Future of Financial Advice) Act 2012* and the *Corporations Amendment (Further*

6 *Submission 143*, p. 4.

7 *Revised Explanatory Memorandum*, tabled 22 November.

Future of Financial Advice Measures) Act 2012—commenced on 1 July 2012 and became mandatory from 1 July 2013.

8.13 As noted in the previous chapter, recent reforms to Australia's financial advice regime have tackled one of the main drivers of poor advice—conflicted remuneration—and hence addressed a major factor that compromised the provision of advice in respect of MIS. It should be noted, however, that the 2014 final report into Australia's financial system recognised the need to better align the interests of financial firms with those of consumers by, among other things:

- industry raising standards of conduct and levels of professionalism to build confidence and trust in the financial system; and
- government amending the law to provide ASIC with an enhanced power to ban individuals, including officers and those involved in managing financial firms, from managing a financial firm, which would enhance adviser and management accountability.⁸

8.14 The evidence from this inquiry into MIS strongly suggested that when it came to the marketing of agribusiness MIS there was market failure on such a scale that regulatory intervention is needed to remedy the shortcomings.

Financial advisers—education and training

8.15 Improvement in the quality of financial advice through the requirement for higher educational standards has been under intense discussion. In June 2014, the committee made a number of recommendations including that:

- Financial advisers and planners be required to:
 - successfully pass a national examination developed and conducted by relevant industry associations before being able to give personal advice on Tier 1 products (which include securities, derivatives, managed investments and superannuation);⁹
 - hold minimum education standards of a relevant university degree, and three years' experience over a five year period; and
 - meet minimum continuing professional development requirements.¹⁰

8 *Financial System Inquiry*, Final Report, Commonwealth of Australia, November 2014, p. 217, http://fsi.gov.au/files/2014/12/FSI_Final_Report_Consolidated20141210.pdf (accessed 4 December 2014).

9 Tier 2 products are generally simpler and better understood than Tier 1. See ASIC, Regulatory Guide 146, Licensing: *Training of financial product advisers*, July 2012, <http://download.asic.gov.au/media/1240766/rg146-published-26-september-2012.pdf> (accessed 3 January 2016).

10 Senate Economics References Committee, *Performance of the Australian Securities and Investments Commission*, June 2014, recommendation 42, p. xxxi.

- A requirement for mandatory reference checking procedures in the financial advice/planning industry be introduced.
- A register of employee representatives providing personal advice on Tier 1 products be established.¹¹
- The Corporations Act be amended to require:
 - that a person must not use the terms 'financial adviser', 'financial planner' or terms of like import, in relation to a financial services business or a financial service, unless the person is able under the licence regime to provide personal financial advice on designated financial products; and
 - financial advisers and financial planners to adhere to professional obligations by requiring them to be members of a regulator prescribed professional association.¹²
- The government consider whether section 913 of the *Corporations Act 2001* and section 37 of the *National Consumer Credit Protection Act 2009* should be amended to ensure that ASIC can take all relevant factors into account in making a licensing decision.¹³

8.16 The Financial System Inquiry (FSI) report also considered the quality of financial advice and similarly recommended raising industry standards and the competency of financial advice as well as introducing an enhanced register of advisers.¹⁴ It referred to a number of high-profile cases where consumers had suffered significant detriment through receiving poor advice and ASIC studies that revealed issues with the quality of advice. For example, it cited ASIC's report on retirement advice, which found that only three per cent of SOA were labelled 'good', 39 per cent were 'poor' and the remaining 58 per cent 'adequate'. It found that:

Although these cases and many of these studies occurred before the FOFA reforms to improve remuneration structures, this is not the only issue. Adviser competence has also been a factor in poor consumer outcomes. ASIC's review of advice on retail structured products found insufficient evidence of a reasonable basis for the advice in approximately half of the files.¹⁵

11 Senate Economics References Committee, *Performance of the Australian Securities and Investments Commission*, June 2014, recommendations 43 and 44, p. xxxi.

12 Senate Economics References Committee, *Performance of the Australian Securities and Investments Commission*, June 2014, recommendation 45, p. xxxii.

13 Senate Economics References Committee, *Performance of the Australian Securities and Investments Commission*, June 2014, recommendation 46, p. xxxii.

14 *Financial System Inquiry*, Final Report, Commonwealth of Australia, November 2014, pp. 217 and 222, http://fsi.gov.au/files/2014/12/FSI_Final_Report_Consolidated20141210.pdf (accessed 4 December 2014).

15 *Financial System Inquiry*, Final Report, Commonwealth of Australia, November 2014, p. 223, http://fsi.gov.au/files/2014/12/FSI_Final_Report_Consolidated20141210.pdf (accessed 4 December 2014).

8.17 The Parliamentary Joint Committee on Corporations and Financial Services supported these findings and made a number of recommendations designed to raise the professional, ethical and educational standards of financial advisers.¹⁶ Its findings add substantial weight to the call to implement without delay the recommendations intended to lift the quality of financial advice and for ASIC in particular to monitor and report on progress. ASIC's efforts should be augmented by the major industry bodies similarly assessing and reporting progress on the implementation of the reforms and their overall effectiveness.

Government response

8.18 The government responded positively to the FSI's recommendation to raise the competency of financial advice providers. It agreed:

...to develop legislative amendments to raise the professional, ethical and educational standards of financial advisers by requiring advisers to hold a degree, pass an exam, undertake continuous professional development, subscribe to a code of ethics and undertake a professional year.¹⁷

8.19 An independent, industry-funded body will set the details of the new standards, which will be recognised in legislation.

8.20 The government also referred to the recently established register of financial advisers. It was the government's stated intention to amend the register to make clear whether an individual meets the new standards and whether relevant bans, disqualifications or code breaches apply to that individual. The term 'financial adviser' and 'financial planner' will be restricted to those listed on the register.¹⁸

8.21 In 2019, a statutory review is scheduled to consider whether the new regulatory framework had raised the professional standards of financial advisers and whether further changes are required. The government indicated that it would

16 Parliamentary Joint Committee on Corporations and Financial Services, *Inquiry into proposals to lift the professional, ethical and education standards in the financial services industry*, December 2014.

17 Australian Government, *Improving Australia's financial system, Government response to the Financial System*, p. 21, http://treasury.gov.au/~media/Treasury/Publications%20and%20Media/Publications/2015/Government%20response%20to%20the%20Financial%20System%20Inquiry/Downloads/PDF/Government_response_to_FSI_2015.ashx (accessed 26 October 2015).

18 Australian Government, *Improving Australia's financial system, Government response to the Financial System*, p. 21, http://treasury.gov.au/~media/Treasury/Publications%20and%20Media/Publications/2015/Government%20response%20to%20the%20Financial%20System%20Inquiry/Downloads/PDF/Government_response_to_FSI_2015.ashx (accessed 26 October 2015).

introduce legislation to raise the professional standards of financial advisers by mid-2016.¹⁹

8.22 On 3 December 2015, the government released exposure draft legislation designed to give effect to the government's undertakings to raise education, training and ethical standards for financial advisers, and called for submissions to be lodged by 4 January 2016.²⁰

Culture

8.23 Much of the conduct detailed throughout this report, however, goes beyond competence. In many cases, the financial adviser was acting unethically—ignoring the client's risk profile, failing to disclose commissions or underplaying risks attached to the investment strategy. In some of the more egregious examples, submitters allege that their adviser falsified documents, withheld documents, and deliberately misled them. The FSI report raised similar concerns about the integrity of advisers. It drew attention to recent cases of poor financial services provision, which raised 'serious concerns with the culture of firms and their apparent lack of customer focus'. It noted that in 2011–12:

...approximately 94 per cent of ASIC's banning orders involved significant integrity issues, where the alleged conduct would breach professional and ethical standards and/or the conduct provisions in the *Corporations Act 2001*. The remaining 6 per cent of cases involved competency issues.²¹

8.24 According to research undertaken by Roy Morgan, cited in the FSI report, 'only 28 per cent of participants gave financial planners "high" or "very high" ratings for ethics and honesty, and trust in bank managers was held by just 43 per cent of participants'. The FSI report also referred to an ASIC survey that found 'only 33 per cent of stakeholders agreed that financial firms operate with integrity'.²²

19 Australian Government, *Improving Australia's financial system, Government response to the Financial System*, p. 21, http://treasury.gov.au/~media/Treasury/Publications%20and%20Media/Publications/2015/Government%20response%20to%20the%20Financial%20System%20Inquiry/Downloads/PDF/Government_response_to_FSI_2015.ashx (accessed 26 October 2015).

20 Department of the Treasury, 'Raising professional Standards of Financial Advisers', 3 December 2015, <http://www.treasury.gov.au/ConsultationsandReviews/Consultations/2015/Raising-professional-standards-of-financial-advisers> (accessed 11 December 2015).

21 *Financial System Inquiry*, Final Report, Commonwealth of Australia, November 2014, p. 218, http://fsi.gov.au/files/2014/12/FSI_Final_Report_Consolidated20141210.pdf (accessed 4 December 2014).

22 *Financial System Inquiry*, Final Report, Commonwealth of Australia, November 2014, p. 218, http://fsi.gov.au/files/2014/12/FSI_Final_Report_Consolidated20141210.pdf (accessed 4 December 2014).

8.25 CA recognised that the combination of conflicted remuneration, tax deductibility and the single licensing regime could be considered drivers of poor advice. Even so, it suggested that with the removal of commission from the sales process of agriculture MIS there was a strong need 'to ensure there are the appropriate behaviours and culture in the advice of agriculture managed investment schemes'. CA referred to the FSI's finding that the industry more broadly needs to address the culture and leadership within its industry.²³

8.26 In this regard, ASIC has made it clear that it is very concerned about culture and that this matter was 'front and centre these days'. It recognised that culture was 'a big driver of conduct in the financial industry'...that 'bad culture often leads to bad conduct', which inevitably may lead to poor outcomes for consumers. Mr Greg Medcraft, Chair of ASIC, explained:

Given that there is a strong connection between poor culture and poor conduct, ASIC thinks culture is a major risk to investor trust and confidence, the cornerstone of our financial system, and to fair, orderly and transparent operation of our markets.²⁴

8.27 The committee notes that subscribing to a code of ethics is one of the government's measures when developing legislative amendments to raise financial advisers' standards. In light of the evidence demonstrating that integrity issues were at the heart of some of the poor financial advice given to MIS investors, the committee highlights the importance of establishing such a robust code of ethics and that this measure warrants close and determined attention.

Recommendation 5

8.28 The committee recommends that the government give high priority to developing and implementing a code of ethics to which all financial advice providers must subscribe.

Banned advisers continue to operate in the industry—the 'phoenix phenomenon'

8.29 One way to send a strong message to the financial services industry about the government's commitment to ensuring that the industry adheres to high ethical standards is through removing people from the industry who bring the industry into disrepute. In its 2014 report on the performance of ASIC, the committee considered the banning of advisers and was particularly concerned about banned advisers or advisers who had been dismissed from their position for misbehaviour continuing to be involved in businesses providing financial advice. For example, Professor Dimity Kingsford Smith noted that even if a person is banned they may continue to be influential in a licensed firm as a director, officer or a significant shareholder. In her view:

23 *Submission 143*, p. 4.

24 Senate Economics Legislation Committee, *Estimates Hansard*, 3 June 2015, p. 8.

The tests for bans and director/officer disqualification are different, and consideration should be given to prohibiting a banned person acting as a director or officer. Similarly, consideration should be given to empowering ASIC to exclude from management a shareholder who is banned. ASIC should have express power to consider the fitness for a license of a firm where a banned person has a significant shareholding.²⁵

8.30 In 2014, the committee asked ASIC whether any impediments existed to extending the ban on advisers to being a director of, or a person occupying a position of influence in, a financial services company. ASIC informed the committee that while it has powers to cancel an AFS licence or credit licence, or to ban a person from providing financial services or credit services, 'a missing element was a power to prevent a person from having a role in managing a financial services business or credit business'.²⁶ It explained that the law as currently drafted means that ASIC can have 'difficulty in removing these managing agents who do not themselves provide a financial service but are integral to the operation of a financial services business'. ASIC explained that it had:

...seen instances where we cancel the AFS licence of an advisory business due to poor practices or other misconduct, but those responsible for managing the business move to another licensee's business, or apply for a new licence with new responsible managers.

If such managers are not themselves directly providing financial services or credit services in that new role, ASIC may not be able to prevent them from continuing to operate in the industry, even where there were serious failings in the previous business.²⁷

8.31 In its main submission to the committee's 2014 inquiry, ASIC recommended amending the law to provide ASIC with the power to ban a person from managing a financial service business or credit business. The FPA advised that it supported this recommendation, arguing that:

If you have been banned as a financial planner there are usually very good reasons for it, and if you were then to be supervising and managing financial planners or a financial planning company we would see it as inappropriate—depending on the circumstances, of course. Obviously it would need to be a serious breach, not a minor breach.²⁸

8.32 Having considered the evidence, the committee recommended in 2014 that:

25 Senate Economics References Committee, *Performance of the Australian Securities and Investments Commission*, June 2014, p. 391.

26 Senate Economics References Committee, *Performance of the Australian Securities and Investments Commission*, June 2014, p. 391.

27 Senate Economics References Committee, *Performance of the Australian Securities and Investments Commission*, June 2014, p. 391.

28 Senate Economics References Committee, *Performance of the Australian Securities and Investments Commission*, June 2014, p. 391.

...the government consider the banning provisions in the licence regimes with a view to ensuring that a banned person cannot be a director, manager or hold a position of influence in a company providing a financial service or credit business.²⁹

8.33 In this regard the committee notes the observations contained in the FSI report. Consistent with the committee's 2014 findings, the FSI observed:

ASIC can prevent a person from providing financial services, but cannot prevent them from managing a financial firm. Nor can ASIC remove individuals involved in managing a firm that may have a culture of non-compliance.³⁰

8.34 The FSI report concluded by recommending stronger powers to ban individuals from management. It reasoned:

An enhanced banning power should improve professional behaviour, management accountability and the culture of firms, by removing certain individuals from the industry and preventing them from managing a financial firm. This should also include individuals who are licence holders or authorised representatives, or managers of a credit licensee. It should prevent those operating under an Australian Financial Services Licence from moving to operate under a credit licence and vice versa.³¹

8.35 This matter once again came to the fore in this inquiry where evidence suggested that banned advisers were, under another guise, still operating in the financial services industry. A number of submitters strongly supported the findings of the FSI and its advocacy for enhanced banning powers to remove certain individuals from the industry.³²

8.36 For example, some investors were concerned that their adviser, who had profited from the poor advice provided to clients, continued to practice. One submitter stated that the 'Phoenix Phenomenon' was 'well practiced amongst shonky advisers'. She explained that her adviser had sold his business pretending to retire on health problems but re-emerged as an employee in another financial services business.³³

29 Senate Economics References Committee, *Performance of the Australian Securities and Investments Commission*, June 2014, recommendation 47, p. 394.

30 *Financial System Inquiry*, Final Report, Commonwealth of Australia, November 2014, p. 218, http://fsi.gov.au/files/2014/12/FSI_Final_Report_Consolidated20141210.pdf (accessed 4 December 2014).

31 *Financial System Inquiry*, Final Report, Commonwealth of Australia, November 2014, p. 220, http://fsi.gov.au/files/2014/12/FSI_Final_Report_Consolidated20141210.pdf (accessed 4 December 2014).

32 Industry Super Australia, *Submission 136*, p. 4.

33 *Confidential Submission 92*.

8.37 Investors were particularly galled where their adviser, whom they considered had abused their position for personal gain, was found guilty of misconduct but promptly declared bankruptcy. The adviser, however, continued to maintain a life of apparent luxury and, furthermore, to practice in the financial services industry.³⁴ In a few cases, the financial advisers have been called to account for providing poor or inappropriate advice. One of the most notable advisers was Mr Peter Holt, who ASIC banned from providing financial services for three years after he failed to comply with numerous financial services laws.³⁵ For example, one couple noted that Mr Holt still enjoyed 'his multi-million dollar lifestyle with untouchable assets, while his clients suffer mental torture every day because of his financial misconduct...'³⁶ They observed further:

It seems as if Holt's business can be temporarily wound up 'on paper' and suddenly reopened in a new version of itself, while victims are permanently shut-down, their lives put on hold, left to unravel in the aftermath of deceit.³⁷

8.38 One grower was particularly distressed to know that her adviser, Mr Holt, was still working in the financial sector despite being banned.³⁸

8.39 Mr Steve Navra was another individual whose name was mentioned in a number of submissions as an example of a disreputable adviser continuing to operate in the industry. For example, one investor stated:

I have heard that Mr Navra (who provided the advice to my family, friends and I) has moved to Victoria and is again providing advice to unsuspecting investors. I am saddened to hear that this is the case and sincerely hope that his new clients do not have an experience like mine. I think a centralised register where potential clients/investors can check the credentials and history of an advisor would be a prudent mechanism.³⁹

34 *Confidential Submission 38*, p. 1.

35 Mr Holt was a director and authorised representative of Holt Norman & Co Pty Ltd and the Responsible Officer of Holt Norman & Co's AFS licence. ASIC cancelled the AFS licence of Holt Norman & Co on 19 September 2012. ASIC found that Mr Holt had failed: to have a reasonable basis for the advice he gave to retail clients; to meet his disclosure obligations to disclose the costs and benefits that may be lost in switching a client's superannuation; and to ensure the business maintained professional indemnity insurance. ASIC, 12-236MR, 'ASIC bans Victorian financial adviser for failing to comply with financial services laws', <http://asic.gov.au/about-asic/media-centre/find-a-media-release/2012-releases/12-236mr-asic-bans-victorian-financial-adviser-for-failing-to-comply-with-financial-services-laws/> (accessed 17 August 2015).

36 *Confidential Submission 37*, p. 3; name withheld, *Submission 41*, p. 3.

37 *Confidential Submission 37*, p. 3.

38 Ms Michelle Johnson, *Submission 139*, p. [1].

39 Name withheld, *Submission 68*, p. [2].

8.40 Another investor also observed that Mr Navra was practicing 'wealth education' seminars in Melbourne.⁴⁰

8.41 It should be noted that ASIC's analysis of Navra Group client files identified clients who may have received inappropriate advice. Accordingly, ASIC has instructed Navra Group to write to those clients informing them that the advice provided to them matched some ASIC indicators of inappropriate advice. Even so, ASIC has not taken any action against Mr Navra, who is not listed on ASIC's Financial Advisers' Register. The Navra Group went into liquidation in September 2011.⁴¹

8.42 Industry Super Australia referred to the FSI's finding that the existing banning powers were insufficient to stop 'particularly unscrupulous practitioners'. It suggested that FSI's recommendation to enhance banning powers, 'if implemented correctly, would have the potential to reduce consumer detriment in relation to forestry MIS and to ensure that consumers are adequately protected from poor product design and misleading advice'.⁴²

8.43 The evidence produced during this inquiry into MIS adds even greater weight to the conclusions the committee had already reached in its report into the performance of ASIC and those of the FSI. In the committee's view, there can be no excuse for delaying taking stronger action against advisers engaging in egregious conduct and those banned from providing financial advice.

8.44 In its response to the FSI report, the government indicated its intention to develop legislation to allow ASIC to ban individuals from management within financial firms from operating in the industry. The committee welcomes this move but to underline the importance of removing opportunities for a banned financial adviser to resurface in the industry, the committee considers that the term 'management' may be too narrow. Thus, in light of the findings of this committee in two reports and of the FSI, the committee reinforces two recommendations it made in June 2014.⁴³

Recommendation 6

8.45 The committee recommends that the government consider the banning provisions in the licence regimes with a view to ensuring that a banned person cannot be a director, manager or hold a position of influence in a company providing a financial service or credit business.

40 Name withheld, *Submission 56*, p. [4]. The author of this submission noted: 'Steve Navra, after the first successful FOS claim against him immediately declared bankruptcy, relocated to Melbourne and is now practicing "wealth education" seminars down there. Why is this allowed to continue?'

41 ASIC, confidential answer to written question on notice, 2 October 2015.

42 *Submission 136*, p. 4.

43 Senate Economics References Committee, *Performance of the Australian Securities and Investments Commission*, June 2014, paragraphs 24.62 and 24.63.

Recommendation 7

8.46 The committee recommends that the government consider legislative amendments that would give ASIC the power to immediately suspend a financial adviser or planner, subject to the principles of natural justice, when ASIC suspects that the adviser or planner has engaged in egregious misconduct causing widespread harm to clients.

8.47 Some banned advisers or advisers with a poor track record and who are no longer registered, may continue to operate in the industry as 'wealth educators' but are no longer under the financial services regulatory regime. The committee considers this matter under the section dealing with general advice.

8.48 It is important to note that financial advisers are only part of the prevailing culture in the financial services industry. Product issuers and gatekeepers such as research houses, have obligations placed on them to act with integrity and ethically and should be held to account for their conduct. In the following chapter, the committee looks at product issuers.

