PARLIAMENTARY JOINT COMMITTEE on CORPORATIONS AND FINANCIAL SARVICES.

Prepared by ROBERT ROSS.

INDEX

EXECUTIVE SUMMARY

ABOUT THIS RESPONDENT

My name is Robert Ross. I have nearly 40 years experience in providing financial advice having worked for an employer operating in the United Kingdom for 16 years before migrating to Australia in 1986. I joined Prudential Assurance employed as a Business Develop Manager, responsible for recruiting, training and supervising its agents. The job evolved into training on broader financial services advice after the demise of the Insurance and Superannuation Commission.

Over time I managed a General agency of Prudential with a colleague and was responsible for the conduct of over a hundred agents or advisers. This included assisting them transition from an Insurance Company Agent to an Authorised Representative of a licensed entity

From an industry qualification perspective I became a Fellow of the Financial Advisers Association becoming the Queensland director of that organization. I have been a member of the Financial Planning association since its inception, and am a Certified Financial Planner.

I have won many industry awards generally in connection with standards for advice, and have spoken at conferences in Australia and overseas.

After Prudential sold their business interests to Colonial I operated for a time as a managing agent of Colonial. From there I was involved in the creation of the Matrix Planning Solutions business which was originally made up from some ex Prudential Advisers.

I have always taken a keen interest in the methodology of how advice id given. I was a co-author with other stake holders of the Code of Practice for life insurance agents and was the presenter of that when it was launched across Australia in 1995. That code which was compulsory lifted the bar as far as developing a need for appropriate advice given to customers based upon needs.

I have made written submissions to a number of select Committees in the past and have been invited to make oral presentation to two of them.

I am still involved in the industry.

ABOUT THIS SUBMISSION

I am making this submission privately. I am making the submission because I have developed a business over many years with a loyal and I believe satisfied customers, and because my son is in the business and intends to continue after my retirement.

There has been considerable disquiet about appropriateness of advice given to customers and there is confusion about the remuneration model most used in the industry without any clear workable alternative suggested.

There have been some catastrophic failures of public companies, investment products and licensees. This should be recognized for what it is, namely an opportunity to learn and make adjustments about the responsibility to provide advice that is appropriate for the particular customer, rather than using them as catalysts to destroy what is a well developed structure for delivering individual advice to Australian consumers.

I have no strong feeling towards any particular remuneration model for advisers but I have a very firm opinion that customers ought to be allowed to choose whatever model is suitable for them. I am strongly opposed to any move that would ban any method of remuneration that is accepted between customer and adviser. I believe that there is choice available in Australia. If any method of remuneration becomes so unacceptable to the community I believe that the market will lead the direction of what consumers prefer. At this time I believe most consumers prefer a model based upon the historic commission system even though I think that that has changed in nature and now is better described as fee for service.

INDUSTRY SUPER FUNDS

I have commented particularly about industry funds because of the adversarial position they have adopted. They have a potential for good in the retirement savings regime in Australia as a stake holder and player. However using member's money to fund a relentless campaign against advisers I consider that they need to be singled out for criticism. They seem to me to have no other motive than to cripple the advisory network which is crucial in the Australian scheme of things and as a result obtain the market share that advisers manage.

Industry super funds have been at the forefront of an attack on advisers spending tens of millions of members money advertising at peak television viewing times seeking to influence customers, the media and the regulators that the culprit for the world's financial crisis is the remuneration model of financial advisers. They have grasped as evidence the failures of at least one North Queensland financial licensee and the failures of some tax driven agriculture schemes and have been assisted in this campaign by the media.

Industry Funds charge members a low member fee but usually do not give any advice. They have developed their own no advice model, have worked out how to charge for the service they do provide and seem to object to others doing the same. Advisers have to compete with each other, with alternative customer investment choices where advice is not required, and compete with industry funds.

Industry Funds seem to attempt to justify their position on anything they can without regards to the merit of their claim. They use the "compulsory nature" of the mandated super contribution environment as having some weight to the no fee argument because it is "tax payer subsidized" while ignoring that other "tax payer subsidized" arrangements such as tax returns which are compulsory, are not done for nothing.

Industry funds I believe find the presence of financial advisers formidable competitors, who they have not been able to defeat despite the supposedly better performance of the industry funds, and it seems to me they are now at the last throw of the dice trying to get rid of them by having their wages banned. While all else has failed that ought to do it.

Industry Funds advertise. Millions are spent on TV or newspaper advertising that industry funds "do not pay advisers'. They also sponsor football teams. That too comes at a cost to existing members. What are the advertisements for? The purpose of advertising is to attract new members or to keep existing ones. Existing members are paying out of their fund balances money to attract a new customer. No one knows whether advertising brings new business or not or how much business it brings. A payment to an adviser is a payment made after a new member invests. That payment only gets made because money was invested. In fact that is a better spent dollar.

NEED FOR INDIVIDUAL ADVICE

Australians need financial advice more than ever. They need encouragement and hand holding to commence an investment programme for life and to stick with it during difficult times. Whether this advice includes Superannuation, alternative investments, paying off debt and better use of credit, or the best use of personal insurance both inside and outside superannuation individuals and families need assistance in making right choices. Hundreds of Australians lose their homes in natural disasters. The message to properly insure their assets can only be delivered in face to face consultation with an adviser. If the financial adviser is removed from the landscape where will Australian working families turn to for advice?

An aging population puts pressure on the tax system which simply cannot support such a high proportion of retirees to workers. Australians need individual encouragement to provide for their retirement years by saving both inside and outside superannuation. Only when an individual fact finder is done and the dire circumstances that an individual faces is revealed and a sensible workable solution is presented to him will a consumer take the steps he needs to solve his own retirement funding needs.

Advice is needed in other areas. Superannuation is but one of them. However it is part of the jig saw puzzle of life and a financial adviser will consider how super fits into the whole financial picture of a customer's needs.

Recent failure of one Queensland financial planning firm demonstrates the need for appropriate advice and more attention to the actual advice being appropriate for individual customers rather than on compliance issues such as how the advice was delivered, that approved products were used or that signatures were on the correct pages.

WORK OF A FINANCIAL ADVISER

A Financial adviser provides advice about a whole range of financial matters including but not limited to Superannuation. The process includes gathering information about the clients financial and other circumstances that are deemed necessary in order to have a reasonable basis for providing such advice.

The advice may include issues about short term financing, use of property or shares in accumulating wealth, the tax position of each and the use of superannuation. Advice may be needed about children's education, children's savings, paying mortgages, use of loans, insurance, granny flats, overseas income and much more. The current issues about performance comparisons of industry super with retail master trusts are insignificant in reality but have been thrust into public attention by a concentrated effort by industry funds without regard to the holistic needs of consumers. Failure of a North Queensland Financial services licensee has been a distraction to the debate but has added fuel to the argument albeit without relevance.

A financial adviser who presents the stark reality to an individual about that persons circumstances have far more relevance than all the advertising could expect to achieve by generalizing.

REMUNERATION

There are two methods of payment for services. Traditionally advisers were paid on a commission basis and recently there has been a move by some for a fee based model.

The commission mode is traditionally a percentage payment made out of funds invested and in the case of life insurance a percentage of the premium charged by insurers. This method has come under scrutiny as stakeholders struggle to find alternatives that are practical and work. The system has survived for two hundred years in Australia and is the most common method in use everywhere else in the world. However while in the past the levels of commission was set by the product manufacturers and paid to advisers who were employed as agents of the manufacturer, there has been a dramatic shift away from arbitrary commission levels to one where the adviser and customer can dial initial and ongoing commission down to zero.

The ability to dial down commission to zero has had an effect that causes confusion as to what in fact constitutes "commission". Many advisers are already working on what is really a fee for service. They charge a customer for preparing and implementing a plan, and charge for regular consultation and adjustments to the plan on an annual or semi annual basis. While the amount charged may be a percentage of the monies invested, usually there is no charge if the customer does not accept the advice.

Some believe that if the payment comes out of the monies invested it must be "commission" and it must be "tainted". This is an unreasonable argument as no payment can be made unless the customer signs off on it. If the payment does not come from the invested funds it would need to come from the customer's own bank account. As industry funds in particular see advisers as their main competitors, there is a perception that they need to achieve an outcome that will prevent a financial adviser being remunerated out of superannuation funds. If they succeed they effectively stop adviser from being remunerated at all, and at a stroke remove their main competitor. Although the industry funds see an issue with advisers being remunerated out of customers accounts they apparently see nothing wrong with themselves being remunerated out of such funds.

The fee for service model has a number of variations from a direct hourly rate with the customer being charged for the time regardless of how much money is invested, to a model which charges a percentage of funds invested not dissimilar to the "commission' model. In the latter case any commission received is rebated to the customer either as a direct cheque payment or as additional units in the investment. In the fee for service model an adviser would charge the customer regardless of whether the customer accepts the advice given or not.

Both models seem to have advocates. However while the proponents of the 'commission' model usually have no issue with others using a 'fee for service' model, usually the 'fee for service' proponents are vehemently opposed to the 'commission' model, even going as far as seeking that it should be banned even though the 'commission' model is widely accepted by customers.

Banning the 'commission' model would be the very worst outcome for customers. At present with the 'commission' model, a customer may seek advice from as many advisers as he likes, and never actually implement any of them and it will cost the consumer absolutely nothing. The 'fee for service' model would cause a cost to the customer for 'shopping around'. Why would anyone want to seek two or three opinions, and be charged for each of them? Worse, there is a greater possibility that a customer would go ahead and implement advice he was not totally happy with because he has paid two or three thousand dollars for it, than there is if he keep seeking advice until he finds an adviser he is happy with and advice he is comfortable with and only implementing that. The 'fee for service' advisers bear no risk whereas the risk is borne entirely by 'commission' advisers.

The advocates of 'fee for service' apparently believe that other professionals such as solicitors or accountants have no disputes about fees. There are others who seem to believe that the method of remuneration will make the advice better or more appropriate. Both assumptions are wrong.

The committee ought to make sure that customers have a wide range of options available to them including 'no advice' such as provided by most industry super funds, a 'fee for service' as is presently available from some advisers, and a 'commission' model although the committee needs to have a clear definition of what actually is commission, and a model which may involve a level of all.

Customers need to know how the service or advice is to be delivered, how they are to pay for it, and be allowed to select any model acceptable to them.

REGULATORY STRUCTURE

The regulator is ASIC. Those involved in providing advice are required to be licensed as an Australian Financial Services Licence holder. If not directly licensed they need to be authorized as a representative of one who is.

The present structure of licensing a responsible entity provides consumers with considerable reason for confidence. However advisers need to be less enslaved to compliance about how they deliver advice, less concerned about the order in which some documents are handed to customers and more concerned about the actual advice. Licensees are bogged down ensuring that advisers have complied with documentation rather than with the content of the advice.

The regulatory system works quite well but advisers believe that ASIC will hit the "little man" the adviser who errs by failing to provide documents in an order or in a time frame rather than to consider the actual advice given and how it is appropriate.

The regulatory system seems to concentrate on the 'correctness' of how the advice is delivered rather than on the appropriateness of the advice. It seems to me that problems arise when the advice given is inappropriate. The North Queensland cases would not have happened if there was more scrutiny by the regulator about the advice itself, about how the advice satisfied the needs of the customer, about whether the level of borrowings being reported were appropriate and necessary to achieve a stated objective of the customer, rather than about the compliance to a process. Some of the customers who invested in agr-schemes did so because of the tax deduction rather than any real expectation of a return on their investment.

Other industries that seem to come close to doing similar work as those who are licensed seem to be able to advertise and encourage customers to invest with them yet they do not need to be licensed. This includes real estate, and computer software used for buying and tracking shares. They often come with considerable claims that others have become rich investing this way.

RECOMMENDATIONS

I recommend that the committee recognize that customers should be permitted to select whatever model of payment for service is suitable to them.

I recommend that the Committee seek to define what is "commission " and what is "fee for service" and that either may legitimately be paid out of the funds invested or from the premiums paid for insurance or may be paid by the customer directly.

I recommend that the fee structure be standardized that all products that are similar be treated the same way. If the maximum fee that can be charged out of an investment be 4% as a plan preparation fee or 1% as an adviser service fee the potential for bias would be eliminated although I have some concerns that advisers and customers arrive at a level which is sufficient to remunerate for the work done.

I recommend that licensees be responsible to ensure that the advice given is appropriate for the customer and more emphasis be placed on the quality and appropriateness of the advice than on the process.

I recommend that others industries which promote investments such as real estate intended for retirement needs or computer products aimed at buying, tracking or managing investments such as shares and options be required to be licensed under a sub license arrangement supervised by ASIC.

I recommend that advisers be permitted to give advice on industry super funds and that a customer be permitted to authorize the fund to pay for the advice out of the invested funds.

WHY THE RECOMMENDATIONS ARE APPROPRIATE

The recommendations are appropriate because they deal with the issues raised in the public arena about 'inappropriate advice' particularly with regards to large levels of borrowings undertaken by customers who simply could not afford them as the recommendations would require that the licensee be responsible for the 'appropriateness' of advice.

The recommendations are appropriate because they recognize that customers need flexibility in choosing the charging model suitable for them and advisers can select a method of charging that is suitable for them. Further each can develop his own business model going forward.

The recommendations are appropriate because where commission levels for similar products may create a perception of potential for bias, this would be removed if 'commission' was standardized.

The recommendations are appropriate because they would require others who claim to have 'wealth secrets' or alternative investments which are claimed will 'make investors financially independent' or will make them 'wealthy in retirement' will be licensed or supervised.

ABOUT THIS RESPONDENT

This submission is made by Robert Ross in a private capacity. I have been involved in the provision of financial Services to retail consumers and to Corporate Superannuation Trustees since 1971. 15 years were spent in UK and 23 in Australia. I have been an active member in the stake older associations for nearly 30 years including a member of the Financial Planning Industry since it began (I am a Certified Financial Planner,) and the Association of Financial Advisers. I served for some years on the National Board of this Association and was the Associations Director in Queensland. I still operate a business delivering Financial Services Advice in the capacity of a Sub Authorized Representative of a Corporate Representative of Professional Investment Services. (License no.234951)

I have made submissions to senate Select Enquiries in the past and was a major contributor to the development of the **Code of Practice For Advising, Selling and Complaints Handling in the Life Insurance Industry** (**Appendix 1 Code Of Practice**) undertaken by the previous Federal Labour Government in 1995. The resulting code was presented by me as the representative of advisers at various meetings throughout Australia in 1995 (**Appendix 2 Code Launch**) Others contributed and presented.

In my employment in Australia I was responsible for recruiting, training and supervising insurance and superannuation advisers as Agents of Prudential Corporation from 1986 until 1996 then operated for some years as a Managing Agent with Colonial.

I was one of a small group of advisers that founded the Matrix Planning Solutions (License no. group which was established by a number of ex Prudential Agents.

I get deeply offended when other stakeholders present a picture that condemns all others and attempt to lift themselves on a pedestal as if only they care about a customer's needs, as if only their way can achieve a customer's goals and objectives, and who claim that those who take a different position are charlatans, parasites or crooks. I have practically dedicated my life work trying to satisfy my own customer's needs, regularly working for up to 80 hours a week for nearly 40 years doing so. I have contributed to numerous committees and Senate Select Committees, contributing to the betterment of advice and attempting to keep the best interests of customers first and leaving remuneration and how it affects my pocket to take care of it' self, always assuming that by doing the right thing I need have no concerns about remuneration.

TERMS OF REFERENCE OF THIS ENQUIRY

The terms of reference are as required by the Joint Committee.

1) The role of Financial Advisers.
2) The general regulatory environment for these products and services
3) The role played by commission arrangements relating to product sales and advice, including the potential for conflicts of interest, the need for appropriate disclosure, and remuneration models for financial advisers.
4) The role played by marketing and advertising campaigns
5) The adequacy of licensing arrangements for those who sold the products and services
6) The appropriateness of information and advice to consumers considering investing in those products and services
7) Consumer education and understanding of these financial products and services
8) The adequacy of professional indemnity insurance arrangements for those who sold the products and services and the impact on consumers; and
9) The need for any legislative or regulatory change.

THE ROLE OF FINANCIAL ADVISERS

Financial advisers are licensed by ASIC either directly as a Financial Services License holder or as a representative of another who is so licensed.

Recommendation. The license regime work well and is the most appropriate method of supervising the provision of financial services. Advisers need to take considerable extra care when recommending products that have a high risk of loss. Where clients are nearing retirement age and borrow for investment purposes, I recommend that at least two advisers discuss the strategy with the client. The second adviser needs to sign off that he also discussed the strategy and approves the recommendation

Recommendation. I recommend that licensees consider the actual advice given and elevate the importance of reviewing the advice to at least the same level of reviewing the compliance of how it was given.

Recommendation. Client risk profiling based upon how clients answer hypothetical questions may not produce a true measure of how a client will react when a loss occurs. I recommend the industry base the advice on what is appropriate to meet a clients stated goals and objectives and as set out in the code of practice for life insurance.

Considerable discussion has taken place about the role of a Financial Adviser. While there has been a vast amount of work done by industry bodies and stakeholders over the last 15 years, debates continue about the role of an adviser, what he does and how he gets paid for it. Recent media debates fiercely driven by Industry Superannuation Funds have centered almost entirely on Superannuation. Various calculations, models and projections being advanced supposedly designed to demonstrate the difference to a consumers financial position at the end of a 40 year period assuming the consumer invested his employers mandated super contribution in an industry fund without the benefit of advice compared with what the consumer might have achieved if he had had an adviser to whom he would have had to pay a fee. The 'fee' in the selected comparisons are always claimed to be 'commission' and they are always cast in a negative light.

So what does a Financial Adviser do? One of the best descriptions of what a financial adviser does and the process a financial adviser follows is contained in **"THE CODE OF PRACTICE FOR ADVISING, SELLING AND COMPLAINTS HANDLING IN THE LIFE INSURANCE INDUSTRY"** This process for preparing and delivering financial advice if followed would make giving inappropriate advice practically impossible. (**Appendix 1**)

The adviser is required to gather information in a fact finding document. This is described as requiring the adviser to establish all of the following details:-

a. The customers financial and family circumstances
b. Details of the customers need's and objectives for income, capital growth, security, liquidity, and the period the customer is planning for;
c. Individual investment preferences and aversion to tolerance to risk
d. The level and type of retirement benefit which the customer (and domestic partner) can currently expect to achieve;
e. Other circumstances such as employment security, age, partner's age, expected retirement age and partners expected retirement age.

The information obtained must be recorded in writing.

Where advice is given the adviser must:-

a) Analyze the needs, circumstances and objectives of the customer to ensure that advice is given on a reasonable basis and is appropriate and
b) Take reasonable steps to ensure that the customer can sufficiently comprehend the advice and the basis for the advice to place the customer in a position to make informed choice

Further where advice is given the adviser must in the written document containing a description of advice include:-

a) A summary of the information and material on which the advice is based;
b) The type(s) of product(s) that was identified as suitable and an explanation of why those type(s0 of product(s) are likely to satisfy the customer's needs and objectives;
c) The name(s) of the particular product(s) that are recommended;
d) An explanation of the reasoning that led to the recommendation of how the particular product(s) are likely to satisfy the identified needs and objectives of the customer;

The process then is one of gathering all of the relevant facts, sorting them and prioritizing needs and objectives of the customer, preparing and presenting strategies that may be useful in assisting customers to satisfy their needs as well as to reach their stated objectives, while also considering alternatives that might do so.

The process will establish time frames and prepare schedules for implementing the selected advice as well as establishing a method of reviewing and adjusting the advice over time. When a need is identified, a solution is worked out and presented and if accepted by the customer it is then implemented. Later when that need ceases to exist the process of review will include how to discard what is no longer needed. However this process takes time and comes at a cost. Industry funds (and the media) use the cost as a complaint against the adviser, as if all the adviser was doing was delivering a superannuation savings product.

A competent adviser following the above process knows that it takes time. There is no short cut. Those who try to short circuit the system end up giving inappropriate advice. It is that simple. A customer wanting to achieve stated goals is encouraged to accept that there is no quick way to becoming financially independent either. For example borrowing for investment purposes may help to magnify returns and accelerate the progress of reaching a predetermined accumulation amount but it comes at considerable risk that falling values will magnify losses and set back the process significantly. This strategy will require much analysis about the possibility of a reversal in values, how such will affect the final outcome to the customer and how such will be dealt with should it occur.

No other professional adviser, a doctor, solicitor, accountant or dentist ever asks the kind of questions a financial adviser asks. No other professional is ever asked to collect and record so much information and to keep it for so long. Every phone call, meeting, conversation or document generated in the relationship has to be meticulously recorded, copied and stored in such a prescribed manner and time frame that the adviser needs to establish a compliance section in his office that would be the envy of any government department including classified and official secrets.

How can I ever demonstrate to anyone other than to the individual customer who's needs are being addressed how the years of knowledge and experience gathered by me and others like me when applied to that particular customer's needs can make such a vast difference to a customer's outcomes? In many cases the customer just does not know what he needs or qualifies for.

So the process of fact gathering can diverge into areas not expected prior to the meeting with the customer. Consider as an example the needs of a customer who is a migrant from the UK?

Other data needs to be collected not even contemplated by ASIC. Likely such is not even provided for in the licensees fact gathering sheets either but none the less vital if the adviser is to give "appropriate" advice and to make a difference.

The adviser will need to know if the customer ever made contributions to the UK National Insurance Scheme. The customer needs to provide his National Insurance Number. How many years has he contributed to the scheme? Did he ever make graduated contributions or even understand what these are? Is he aware that he can continue to make voluntary contributions from Australia? What class of contributions can he make? Does he know that if he makes those contributions, he will be able to claim the UK age pension when he retires in Australia? Does he know that Australian age pension is means tested and the British one is not? If he continues to make those voluntary contributions and for some reason later in life decides to return to the UK he will not have fallen behind with his pension contributions.

If the customer settles in Australia and retires here and makes voluntary contributions to his UK pension he will receive it when he retires. It is not means tested. Obviously the first priority is to the customer but where an adviser investigates all opportunities for every customer these can result in benefits to the Australian community (**Appendix 3**) shows correspondence about one such customer)

To provide advice the process will require a first meeting which will involve much of the fact gathering and will certainly take some hours. There usually has to be more than one fact finding meeting.

The customer will need to go through and describe in detail pretty much everything about his financial life. It will include his personal details, his employment history, the security and prospects in his work, his marriage history, his parents assets and likely inheritances, his mortgage, credit card and other financial commitments, his super and life insurances and how the numbers were arrived at, if there are previous marriages details of property settlement sometime partly forgotten. He will have to complete fact finders on his health, medical history, possibly failures in the past to disclose health matters to insurers or financial facts that he was not aware were important, describe his work and the percentages of his day/week doing what. He will need to bring in insurance policies and authorize the adviser to seek copies of past proposals from insurers.

If the customer has a spouse or partner, that persons circumstances will need to be considered during the process. If they have been or are associated with companies or trusts these will also need to be examined. The fact finding process can take many hours. There will be some who read this who simply do not understand that. They will be used to thinking, "Super", when they think "Financial advice".

After the fact finding process is finally completed, the next stage will be that the adviser will in effect create a diagram or "road way" that will take the customer on his "life journey" financial facts, details of past transactions as well as a new starting point from when the client first involves the adviser. The life journey will anticipate diversions, obstacles and distractions that are likely to occur along the way. This "road way" is the plan, designed to meet the needs of the customer and to deal with the diversions that will occur as well as be prepared for those that might. The adviser will then present this "road map" as a "draft statement of advice".

The "draft statement of advice' plan will be broken down into sections that describe in writing the customers circumstances, what the customer sought advice about, his goals and time frames, identify areas that he should be seeking advice about and those where he has not. For example he may have revealed that he has no house insurance. One would have thought the Canberra fires a few years ago would have alerted everyone for the need for house insurance. The recent Victorian fire horror stories indicate that nothing was learned from the Canberra fires. An adviser will not just ignore this fact without discussing the consequences with the customer. If the adviser does not provide general insurance he will at least alert the customer to his need for it even referring him to someone who does.

The, "draft statement of advice", will demonstrate how the customer's goals can be met and will outline alternative methods of meeting them. Super will likely be one of them. It will also highlight risks that exist which can prevent a plan succeeding no matter how meticulously it was put together. Examples of these can be illness, accident or unemployment. Another example of this is the recently Federal Government budget announcing reduction of maximum salary sacrifice contributions to superannuation from $100,000 to $25,000. As a direct result of that decision many people now have their retirement plans in tatters. Those who have used the early years of their lives paying off home mortgages, educating children and helping aged parents and who had intended to sacrifice large amounts of their salary in the final 10 or 15 years of their working lives can no longer do so. It is little wonder that some anxious investors fall victim to scams as they try to make up lost ground.

No adviser can predict what a present or future government will do. But when a government makes changes not anticipated when a customer embarked upon his plan it is the adviser who will be expected to come up with a new alternative to substitute for that which was intended to achieve the desired goals. These changes to plans caused by legislation changes cause far more damage and incur far more cost to customers than any fee charged by an adviser ever do.

This may require a change in strategy. For example a customer might then consider purchasing an investment property, something which he may have considered before but not done, favoring salary sacrifice to super instead. This unexpected turn of events is just one of the diversions referred to earlier. It can make planning quite an impossible task.

Whatever the customers circumstances, the adviser will recommend what is considered to be a suitable strategy towards achieving their stated goals which will be demonstrated with supporting cash flow analysis. Disasters happen over a lifetime and the adviser will always be considering strategies that have some flexibility to deal with this. Investment options will be matched to the client's tolerance for risk. Recent world stock market failures where Companies that one believed to be strong but which have failed has demonstrated that this is not an exact science and is as easy to get wrong as right.

In fact the reaction of the investing community to these setbacks may suggest that the traditional method of assessing client's tolerance to risk may be flawed. Perhaps new ways of working out what a client can really tolerate will need to be investigated. None complained when house or share prices were rising year after year, believing that they thought they could tolerate a downside. Now that it has happened some are claiming that they, 'did not understand' what they had been advised. Solicitors acting for class groups are now investigating if licensees or banks or advisers can be sued. Professional Indemnity Insurances may be insufficient to cover these claims.

At the presentation of the draft plan more adjustments will happen, changes will be made, clarification about goals perhaps not made clear at the start will emerge and the plan will return to be rewritten and to accommodate those changes. A final plan will then be prepared. The adviser will see the customer again to have the final plan accepted. Once accepted the implementation process will commence with form filling, more questioning, medicals visits organized if there is insurance advice given and policies to be applied. The adviser will also prepare referral letters if the customer is to be referred to other advisers. It is simply not possible to calculate exactly how long the process from start to finish will take.

Insurances is another necessary component of advice. An adviser will calculate all of the insurance needs for a customer. After calculating the levels of cover needed, the adviser will work out what policies are suitable, who should own the policies, how premiums should be paid and the best tax result in the CASE OF A CLAIM. Many commentators argue that personal insurance should be held within super funds.

Superannuation funds usually allow for insurance to be held within the fund. Industry funds provide some level of cover even claiming a cost advantage, arguing that such "group insurance" is cheaper. They leave the calculation about levels needed to the individual member. An adviser will not dismiss such cover as not relevant but will match whatever additional cover the customer needs sometimes recommending that such be owned outside super. (Those who advocate insurance inside super will howl in protest.) While the motivation for them will usually be the "cheaper premium" The motivation for a good adviser will be the best outcome to the customer in the event of a claim arising.

Death benefits are specifically permitted to provide benefits for the members dependants after the members' death if the member dies before or after attaining retirement. (**Section 62 (1)(iv)(v) SIS Act and Section 62 (1)(b)(iii)(iv) SIS Act) (Appendix 4**). An adviser will calculate what benefits are needed before the member attains retirement age, what death benefits the member wishes to preserve into retirement to be paid after retirement age, and what benefits are for purposes other than to provide for needs of "dependants". The blanket insurance cover provided within super funds may not satisfy the customer's needs. Further issues of portability where a member changes occupation, as well as reducing levels of cover as the customer gets older and nears retirement where the possibility of dying actually increases cannot be dealt with without advice.

Total and Permanent Disability Insurance brings further complications and considerations. Where a super fund has claimed a tax deduction for the cost of the premium a modest reduction of cost is achieved because of the deduction but this is achieved at enormous cost to the customer IF A CLAIM SHOULD OCCUR. In that case the payment of the benefit will be treated as a benefit from an untaxed source and the tax liability may be as much as a third of the benefit. I have a client who recently became totally and permanently disabled and the insurer paid the (TPD) benefit of $350,000 to his super fund. To get this payment paid out of the super fund he has a tax liability of over one hundred thousand dollars. The tax deduction for the premium claimed by the fund is now indeed bitter sweet. So the process of working out insurance needs is as complicated as the rest of the financial needs of the customer. For this reason there are some advisers who specialize only on providing insurance advice.

The policy disclosure statements (PDS) can be quite daunting. (Appendix 5) An adviser may need to examine a few of these before making recommendations and may need to examine the PDS of existing policies where the customer is considering cancelling. Some product scoring tools are available but these do not substitute for a real knowledge about products. Advisers relying on comparison software are sure to be open to claims against them should a claim occur which may have been covered under a cancelled policy but is not covered under a new one.

Insurance calculations are not a science either. Recent press releases involving soldiers serving overseas and their need for insurance or level of cover needed has dismayed many Australians. One newspaper quoted that as much as 2 million dollars of cover was needed. However they at least serve to show that if disability or death occurs there is a financial cost to others. Whether this calculation is accurate or not, the need for insurance has at least been focused on, something that an adviser has to do every day.

When all of the work, the fact gathering, checking, comparing, preparing options, draft plans, alteration, acceptances paperwork completed, insurance applications made, medicals and other requirements followed through and all submissions done, the adviser establishes a review process. The number of times the adviser sees the client each year will be determined by the case and its complexity but generally once or twice a year is sufficient. The adviser will set the appointments in advance and determine what he needs to have available prior to each appointment. The reviewing process once determined will take time as the customer's circumstances and needs will be reviewed again. This routine will continue to be for as long as the relationship with the customer lasts.

THE REGULATORY ENVIRONMENT FOR THESE PRODUCTS AND SERVICES

Recommendations. The regulatory environment is appropriate.

The provision of financial services is regulated. ASIC is the regulator. No one can give advice, sell or make recommendations which involve advice about securities, superannuation or insurance unless that one is licensed or is deemed to be licensed by virtue of being authorized by another who is licensed by ASIC. The responsibility for all advice given by an adviser is borne by the licensee. When an adviser makes recommendations, if these include the use of any "products" these products must be on an approved list of products of the licensee. These include all investment products such as tax driven agricultural products.

From a compliance perspective the adviser will need to have checks and balances in place to satisfy an audit. It is a continuing source of irritation to advisers that a licensee will for instance appear more interested that the adviser has handed the client the correct version of "the adviser service guide" than that the advice given was appropriate Failure to do this is far more likely to result in discipline to the adviser than inappropriate advice will ever do.

The licensee will check that anti money laundering processes have been properly documented. If that is not done correctly there is a much greater likelihood that the adviser will be disciplined than there is if the advice is inappropriate.

The licensee will be concerned that timely records of advice have been provided to the customer. Again it is frustrating to advisers that there is a much greater chance that the adviser will be suspended, or reported to ASIC because of a failure in this area than there ever will be because of inappropriate advice.

The licensee will check that all products recommended are on the licensees product approved list. An adviser is almost certain to be disciplined or reported for a failure in this regard. Whether the advice given is suitable is far less likely to be noted.

The licensee is going to examine disclosure. That the adviser incorrectly discloses what he gets paid and from whom, is much more likely to be considered a crime than will the appropriateness of the advice be.

IF THERE IS ONE THING THAT SHOULD COME OUT OF THIS ENQUIRY, IT IS NOT THE BANNING OF COMMISSION, SOMETHING THAT WOULD NOT MAKE ONE IOTA OF DIFFERENCE OTHER THAN REMOVE A LEVEL OF COMPETITION FOR INDUSTRY FUNDS, IT IS NOT THE LEVELS OF COMMISSION PAYABLE BY DIFFERENT PRODUCTS WHICH MAY GIVE SOME POTENTIAL FOR

BIAS, IT IS THE NEED FOR ADVISERS TO GIVE APPROPRIATE ADVICE TO EVERY CUSTOMER. ONLY THAT WILL RID THE INDUSTRY FOREVER OF INNAPROPRIATE GEARING, AGRICULTURAL SCHEMES ADVICE THAT IS TOTALLY TAX DRIVEN, AND EVERY OTHER ISSUE THAT HAS DOGGED THIS INDUSTRY FOR YEARS.

Appropriate advice will address the needs of the customer.

ASIC, advisers and licensees need to make sure that appropriate advice is at least as important as advice delivered to satisfy a compliance regime. Most of the industry woes have been as a result of bad advice, but few are prosecuted for that.

Many experienced advisers feel that their knowledge and experience count for little. They are so restricted in what they say or do that they feel unable to give appropriate advice that is meaning full. Some feel that the compliance regime dominates and that the quality of the advice is not considered.

For example a customer may have a strong wish to invest in residential or commercial property. The adviser may himself invest in such and may even have become quite wealthy because of these investments. Still the licensee may not allow the adviser to make such a recommendation. Others not licensed may be making such recommendations.

In one advertised example investors are encouraged to invest in residential properties, investors with a family income of $70,000 supposedly being able to buy 5 properties in a 9 year period positively cash flowed. No assumptions are described. The advertiser claims to be able to give what "no one else can offer". The advertisement indicated that loans of up to $3,535,000 could be sustained. No mention is made about how the investor will deal with rising interest rates should these ever again climb to the awful levels of the late 1980s, or if the customer became sick, or if house prices suffered the collapse in values such as has happened in the UK or in USA. Yet the adviser does need to be licensed. **(Appendix 6)**

Another advertiser claims that he can teach others to make a fortune while they sleep. **(Appendix 7)** No license required here either apparently.

Some advisers feel that their experience counts for nothing. For example they find themselves tied to asset allocation tools requiring customer's funds to be rebalanced to a pre determined asset allocation percentage. These can require that investment growing in a rising sector which causes that sector to become heavy, must be sold and reinvested into a sector that is falling and which has become light. That can be throwing good money after bad. Advisers who do not stick rigidly to the asset allocation which is supposed to reflect the customers risk profile can have audits qualified and be in trouble with their licensee.

Master Trusts, and Wrap Platforms are now considered as "products" when in reality they are little more than accounting or book keeping tools not dissimilar to what MYOB or QUICK BOOKS are to accountants. There has been considerable use of platforms to create 'products' only available to a particular licensee. The product manufacturer gives the product a 'badge' in the name of the licensee. In effect the licensee then appears to have created their own product. Most of the large administrators such as BT and Oasis do this.

Badged products cause problems for advisers and increased cost to customers. They will be practically identical to the basic product. The likely only difference may be in the fee structure. The badged platform will have higher administration fees. This is not the adviser fee that can be dialed from zero to 5% or the adviser service fee that can be dialed from zero to 2% and which needs to be agreed with the customer. The administration fee cannot be altered by the adviser or the customer. The difference in fee structure is usually paid to the licensee and creates a source of revenue to them.

Sometimes a part of that income paid to the licensee is paid to the adviser. This has to be disclosed to the customer but sometimes it is rather vague along such lines as: "your adviser may share in some of the administration fee payable from (the product) to the licensee. It is not possible to quantify how much this may be as it may depend on production levels or other factors".

In reality the amount paid to the licensee may be quite readily calculable. However the adviser may have to achieve certain level of production to the 'badged' product before he can share in the payment. I believe the licensee should disclose the actual amount paid to them. In reality I would rather see it done away with as it may prevent the adviser using the base product if that is not on the RPL of the licensee.

Some advisers reduce their service fee to take into account the additional payment. Not all do so. This may be disastrous for the adviser should he later leave the licensee. The new licensee may not allow the adviser to continue with the "badged" product. The first licensee will continue to receive the additional "administration" charge which was to be shared with the adviser. This is no longer possible as the adviser is with a different licensee. If the adviser was relying on the share of the admin fee and no longer receives it he may now need to increase the adviser service fee. Alternatively the adviser may recommend that the customer switch out of the product. It is difficult to justify this if it creates a tax liability or some other problem to the customer.

Clearly products need to be regulated, the fee structure spelled out to customers and any income paid to the licensee be disclosed.

I also believe that where others not licensed as we are who offer schemes as those described above and who promote such to the public need to brought into a licensing structure of some kind.

THE ROLE PLAYED BY COMMISSION ARRANGEMENTS RELATING TO PRODUCT SALES AND ADVICE INCLUDING THE POTENTIAL FOR CONFLICTS OF INTEREST, THE NEED FOR APPROPRIATE DISCLOSURES AND REMUNERATION MODELS FOR FINANCIAL ADVISERS.

Recommendation. Historically remuneration was set by product manufacturers and paid to their agents and was called commission. Clients had no input or say. Now the amount that is paid to an adviser has to be approved and signed off by clients or it cannot be paid.

I recommend that the word 'commission' be dropped in circumstances where the client has to agree and approve the payment. This should be called 'Adviser fee'. 'Commission' as a description of remuneration should only be used in circumstances where it cannot be turned off or on by the client or the adviser. In those circumstances it should be disclosed.

I recommend that the payment of any fee may be made out of the funds invested or from a client's bank account according to what the client and the adviser agree.

I recommend that if the payment is directed by the client to come from the invested funds that this be recognized as a payment from the client and not from a product provider.

I recommend that if a client who is a member of an industry fund seeks advice and authorizes that payment of fee come from monies in the fund that the industry fund so directed be required to do so.

The evolution of the industry is one where historically the adviser was an agent of the product provider and where commission amounts was controlled by the product provider, to one where the adviser is an agent of the customer and where the customer and the adviser control the remuneration. This change has contributed to this confusion as to what constitutes 'commission' constitutes 'a fee"

Historically payment to the agent was selling the product. The product provider calculated the cost of distribution in the product structure. While there were still regulations about the need to "sell" products that were suitable for the customer the perception was that the agent was selling a product. What has changed?

One thing that has not changed is that after identification of customer's needs and goals and as described earlier, the solution to those needs usually requires the supply of a "product'. Even home loans, credit cards and overdrafts are now "products" This is partly because of regulation that needs to disclose to customers information they need to know especially about fees. Financial institutions need uniformity. That removes the possibility of mistakes or charges being made that were not disclosed.

However the distribution pricing structure of the product has changed. The product manufacturer can no longer pay anything to the adviser unless it is approved by the customer. The product provider has some cost associated with the production, administration and general management of the product but those are recovered by charging an "administration fee". That fee cannot be altered by the adviser or the customer.

Still, the adviser has to be paid. Most investment products allow for the customer to approve that payment be made out of the monies invested. This may include an initial amount to be paid to the adviser for undertaking all of the necessary work while carrying out an analysis of the customer's requirements as described above under the role of an adviser. It can be a flat dollar amount or a percentage of the funds held. If the customer does not authorize such payment it cannot be taken from the fund.

Confusion arises because of the historic nature of such a payment. As described above historically this first upfront payment was commission set by the product provider and paid to its agents. Now it is an optional fee entirely controlled by the customer. In reality it is no longer "commission" and just because it can be paid out of invested monies does not make it 'commission". There is a need to clarify that payment as a fee for service because that is what it is. If the service had not been provided the payment could not be made. If the customer does not authorize it the payment cannot be made.

Many advisers do not charge the fee if the customer does not accept the advice. Perhaps that has led to the perception that the payment is for "selling a product". The perception follows that no product is sold so no fee is charged'. This may be the single greatest benefit for all customers. They can see as many advisers as they like. They can have as many plans done as they wish. They will not have to pay unless they actually take the advice. That some would wish to change this to a system where the adviser would charge whether one accepted advice or not beggars belief.

Of course there are other advisers who do charge for giving the advice whether it is implemented or not. At this time customers can choose either. But even those who charge this way still have to use products. As stated practically every need gets satisfied with a product. If the advice is appropriate very likely both advisers will recommend the same or similar products.

Historically product manufacturers also paid an ongoing commission to their agents. This was always intended to be a payment so that the agent would be able to provide ongoing service to the customer and to prevent the agent concentrating all of his efforts to selling new products and neglecting the customer. The ongoing commission amount was pre determined by the product manufacturer and could not be altered. This too has changed.

Like the initial 'fee for service' most products allow the customer to authorize a payment to the adviser for providing ongoing service. The amount is absolutely at the discretion of the customer as agreed with the adviser. If the customer does not authorize it, the product manufacturer cannot pay it. If the customer selects to pay for ongoing advice directly to the adviser or authorises that it may be paid out of the invested funds it is still a fee for ongoing advice.

Issues occur when in the "statement of advice" such payments are described as "commission". While in the disclosure statement this may be referred to as 'ongoing commission' in the manufacturers PDS it may be described as "adviser service fee". Confusion could be removed here too if it was called what it really is. It is a fee for ongoing service. It can be switched off by the customer. if the adviser does not give service or if the adviser charges the customer directly the customer would switch the payment off.

To call any of the fees described above as 'paid by the product provider' or 'tainted' is mischievous. Such assertions are generally made in order to muddy the waters and to support and advance some other argument.

Is the fee fair? There are many methods of attracting business. A fund can advertise, can sponsor football teams or find other ways to attract business. Industry funds use all of those. There is no way of knowing if the advertising dollar is well spent or actually produces business. Further the cost is borne by existing customers for the purpose of attracting new customers. Is that fair?

Compare that with a fee paid for by a customer out of his personal fund balance for advice given to him. That is fair? If the amount is calculated as a percentage of the funds invested, and the balance increases the payment will increase. If the performance of the investment reduces the payment will reduce. In many ways that is fairer than a flat hourly rate where there is no co-relation with performance.

It is also fair because the amount paid is usually rather modest. Fortunately most customers do not demand a high level of service. If they did it is unlikely that 1% adviser service fee would be sufficient unless the customer had quite high balances. Usually those who have demand a considerable higher level of service and ongoing advice.

It is fair because it is spread over time and is a convenient method of payment. Somewhat like a customer pays a percentage of salary to Medicare each year although there may be years when they do not need a doctor But when they do they are not confronted with a large medical bill they could not cope with.

Is the fee transparent? If the fees charged are as I have described above they could not be more transparent. Further if they are as I have described then they must be approved by the customer. The area where there is uncertainty is where a share of administration fees with products badged by manufacturers for licensees is paid to the licensees.

Are there any "hidden" fees or charges? An adviser may find a particular product suitable for a large number of his customers. There may have been a history of stellar returns, a history of accurate reporting or a sound administration generally free form errors or delays. For those reasons he may have a larger number of customers using this product and continues to recommend it

The product provider may decide to offer the adviser some "soft dollar" reward. While the cost of funding this is not hidden as it will be included in the product providers administration fees and paid out of profit, there may be potential to influence the adviser to put more customers into that product. The adviser at present has to disclose if he receives any such benefits. This must continue to be the case.

Volume bonuses are payments paid by a licensee to an adviser who is a high producer or may be a payment from a product provider. This type of payment could be in cash or in a soft dollar. I have no issue with that and can understand that a licensee may find a considerable administration cost saving supporting an adviser who produces two or three times as much income as the average adviser.

Licensees charge advisers for services rendered. This can be a considerable cost especially to low producers who need more supervision because their low production leads to lack of practice and the likelihood of errors occur. Some licensees charge a flat percentage of the adviser income. Clearly a large producer pays a lot more to the licensee. I have no issue where the licensee provides additional benefits to that adviser or if the fee structure is reduced to such a higher producer.

However I believe that there is potential for conflict if product manufacturers were to do so. I do not know how to remove this entirely. All professions have bad apples.

There are advisers who charge fees based upon hourly rates. Typical fees are in the region of $300 an hour. The cost of preparing holistic advice will be determined by the time taken.

There may be other fees in connection with phone calls, copying and other costs of the adviser. Customers wanting to know the cost should get a clear cost statement from their adviser.

There are others who claim to be a fee for service, and who rebate by cheque any commission they receive. They then charge the customer directly. I have seen actual case where the adviser received an upfront fee of 5%, gave it back to the customer, and then charged the customer a fee that was equivalent to the 5% rebated. I was stunned that the customer thought he had got the advice for nothing because he was given a cheque equal to the one he was charged.

Still there are advisers who rebate all commission then charge for time regardless if it is more or less than the rebated amount. This seems to suit some customers.

The 'commission' remuneration model which as I have described it is actually a fee for service has many advantages that can be forgotten in the clamour for something new. One is that the customer only pays if they accept the advice. They can get as many plans as they want done by as many advisers as they wish and only select the one that most suits their need. They can agree with the adviser on the level of fees. The cost of service is spread over time. The fee based on fund balances goes down in tough times. It would be very silly to ban this method. It would be damaging to many customers who cannot afford a fee.

It seems to me that the best outcome would be that every customer who wants advice be allowed to select whatever model is suitable for him.

I have not commented much about products but would suggest that any potential for an adviser to be biased and to recommend one product over another would disappear if payment of commission or fees were to be standardized. Given that in most cases these are variable from zero to 5% I fail to see how that would achieve anything as the adviser will charge what he need to.

'Commission' which is really a fee for service has come under attack because of the perceived influence the payment of 'commission' can have on the choice of products recommended to the customer. Again I do not believe that this conflict actually exists.

Some say that the payment is 'tainted' if paid out of the invested funds. The truth is that the payment is made by the customer out of the funds that he owns. This is true whether it is an upfront fee or an ongoing adviser service fee. The only possible other payment not approved or authorized by the customer is where the licensee receives a share in the administration fee which I also referred to earlier.

How do other professionals or industries operate? Most who recommend a product also supply it. The first priority should be the suitability of the product to satisfy the customers need.

A dentist may recommend some treatment. The customer will be charged for the consultation where the dentist identifies a patient's needs. The dentist will then carry out the treatment and will also charge for that. No one seems to have found issue with that. Do they really believe that one dentist do the diagnostic work and another does the work? That is more likely to increase the cost rather than reduce it.

What if a product is recommended by a dentist? The dentist supplies that too. I have attached an example of treatment recommended by two separate dentists for treatment for the same child. While the recommended treatment from both dentists is almost identical, they charge different amounts for some of the products recommended. Is the customer to assume that both dentists get the product from the same supplier, are charged the same amount by the supplier? Are they then free to put a mark up as each sees fit? **(Appendix 8)**

Does one dentist get a 'volume discount' if he uses the product a lot? Could it be argued that the "supplier pays the dentist". Certainly the supply of a product by a third party to the dentist creates an opportunity for the dentist to put a mark up and hence increase his income. If the product was not recommended would the same opportunity to get an income still exist? How has the opportunity to sell the product for a profit influenced the advice and the treatment the dentist has recommended? Does the fact that another dentist made a similar recommendation add credibility to the advice? The dentist charges for his time anyway. Why does he need additional income from the product?

The doctor analogy has been worked to death but still deserves consideration. Who really pay the doctor? Most customers provide a Medicare card and the doctor claims a payment from that. Where did Medicare get the money so that it can pay the doctor? Is this a payment from a 'product'? Is the payment a 'fee for service' even if the doctor does not directly charge the customer? Some doctors have been accused of over servicing, that is seeing their patients too often or ordering too many tests. Has that led for a call to ban Medicare? Usually where such a doctor is found guilty for such an offense it is the doctor who gets banned.

ROLE PLAYED BY MARKETING AND ADVERTISING CAMPAIGNS

Marketing and media have a great potential to influence and even mislead.

I recommend that in such cases where an opinion is stated that a disclaimer be made that the statement is the opinion of the author, and that each consumer needs to consider his own circumstances before acting on or relying upon any statement made by the author.

I recommend that where a media campaign seeks to influence consumers to a course of action, or claims that one type of investment is likely to be better than another or that one method of payment to an adviser is better than another, that the writer be first licensed so as to be able to make such a comment and second supply a worked example in support of the assertion, and to include a disclaimer that consumers need to consider their own circumstances which may be different from those used in the example.

Experienced advisers are greatly troubled by some statements made in the press and in advertising particularly by industry funds. Some assumptions used seem deliberately designed to arrive at the conclusion that the proponent wishes. To do some arguments need to assume that the adviser will give no advice other than advice about Superannuation. Industry funds in particular push this view. Nothing could be farther from the truth.

Industry funds give no advice. What they do and what an adviser does is chalk and cheese. Yet they have spent millions of dollars of member's money in prime television advertising and newspapers. Some newspaper advertisements placed by industry funds take half a page or more. (**Appendix 9**) Their advertising campaign presents fictional case comparisons, in one where two people, supposedly of the same age, employed by the same employer, one employee contributing to an industry fund and not receiving advice, while the other has an adviser who charges for advice (called commission in the campaign).The advertisement then projects forward to the end of 40 years.

The differences between the super account balances are then compared. The 'no advice' employee is purported to be "a lifetime of difference' ahead. No mention is made about the customer's total net worth. No mention is made about our client Mr. McDonald who died suddenly and did not see the 40 years. Mr. McDonald is a real case where we had provided for hundreds of thousands of dollars of life insurance cover. That was paid to his widow. She was able to provide for herself and provide some assistance to adult children. There are thousands of other Mr. McDonalds.

These calculations are thoroughly misleading. They give no value to advice. They assume that in the 'advice case', the adviser would have received a fee, which they call commission, and that the adviser would do nothing to earn the fee. To arrive at the given result claimed the adviser would have had to select the same investments that the industry fund would have selected and that the adviser would have had to have made no adjustments to what the industry fund would have done.

It ignores that the adviser would at the very least have encouraged the customer to make a personal contribution to Super in order for the customer to obtain the government's co-contribution benefit. That one piece of advice alone would have altered the final outcome considerably in favor of the "advice" customer. The campaign argues that only industry funds have the interests of the customer at heart. To satisfy the likelihood that their advertisements may mislead they have had to include disclaimers that the assumptions used may not be replicated in fact over a life time.

The opposition by industry funds is intimidating. They claim that advisers will not recommend them. Advisers will have no problem recommending them if the fund will agree to pay out of the customers accumulated balances the cost of advice if that is what the customer instructs.

Industry funds claim to be run "only for the benefit of members" But they pay their own staff. That cost comes out of the members fund balances. An adviser has staff too. Is the adviser expected to find the money for his staff from somewhere else?

Industry Funds have been established now for about 25 years. These have been the most vociferous about the fees paid to financial advisers. They have spent millions of member's dollars, taking half and full pages of national newspapers critical of the commission paid to advisers. (**See Appendix 9**)

They generally have contributions made to them sometimes partly mandated as respondents to industrial wages award. Some employers have to make some compulsory contributions to a particular fund.

Some of the funds listed below have operated for over 25 years. These are selected here as a sample to demonstrate numbers of members and amounts of funds under management. They typically have large numbers of members who have relatively low balances. The numbers listed below are as they appeared on the web site of each industry funds. They charge members fees of up to $2 a week. There are other administration fees and fund investment fees. Members select the investment class they consider most suitable them and select the level of insurance cover they want.

Where industry funds give access to a financial adviser the method of remuneration for advisers and the cost of advice is described as "our advisers are paid a salary" There is no mention of what the actual cost to the member is nor what the "salary" is nor how the "salary" is validated. I have been in this industry for nearly forty years. I have recruited, trained and managed advisers. Where these have elected to receive a salary as salaried agents there has always been a validation requirement.

I was employed for 10 years as an institution adviser. I was paid "a salary" The salary was set by me. I could ask for (and get) $100,000 or $200,000 or more. Whatever I asked for I got. But I had to validate. That means I had to achieve production targets. My performance was monitored monthly. If my production fell so did my salary. It was a sales based salary. Is this how industry fund advisers validate?

Advisers who are paid a salary have performance benchmarks or production levels to achieve. No one can pay anyone for doing nothing. There is always a performance benchmark. Call it "salary" or call it "adviser service fee" or call it "commission" Call it whatever you like but it is money, taken from the account of the individual member who asked for the advice. If industry funds were to give all customers advice and the cost was to be taken out of the members account balance, the cost would be reflected in the performance of the fund.

The average balance of the 6 funds listed below is $23,722. Sunsuper has an average member balance of $12,000. Of its 1 million members, 5% salary sacrifice. 950,000 members do not. Sunsuper has been included here because it has been established for 22 years, has a million members and is the one most familiar to me.

1) Australian Super. $28 billion, 1.3 million members. Average member Balance $21,538

2) CBus.	$13 billion 500,000 members.	Average Balance $26,000
3) Host Plus.	$7.5 billion 898,000 members.	Average Balance $21,500
4) MTA.	$6.1 billion 280000 members.	Average Balance $21786.
5) Care.	$3.5 billion 280000 members.	Average Balance $15,909.
6)Media.	$2.6 billion 110,000 members.	Average Balance $23,600.
7) Sunsuper.	$12 billion 1,000000 members.	Average Balance $12,000.

Industry funds have spent millions of dollars of their member's money on prime time television advertising. They have been critical of advisers remuneration with statements like "we do not pay advisers commissions" APPENDIX

I have no issue with industry funds. But I question, if they are so fantastic why does millions of dollars need to be spent advertising? Industry funds are important players in the industry. They provide a cheap service by collecting member's money, allocating it to the members account, allocating to an investment mix and providing annual statements. Advice is usually not included.

Industry funds claim that they do not "pay advisers commission". But they spend millions of dollars advertising, and millions of dollars sponsoring sports teams. This is a cost to members. It may be an awareness cost or a cost to attract business. No one can know if those costs produce anything. At least adviser fee is only paid because of business submitted. In actual fact an adviser fee is a better cost because it is only paid after it has brought business in.

While there are some who say all news good or bad is advertising and should be welcomed. In reality though, no one is happy to be on the receiving end of bad publicity. However when something goes wrong the news men love it. Thumb through the front or business pages over a week or two in any newspaper, and the headlines howl about politicians travel or expenses cheats, poorly trained doctors and badly equipped hospitals, lawyer's who's fees puts the cost of justice out of reach of average Australians, and of course investment scams are lapped up with glee by the pack.

Unfortunately they usually do not have to look too hard for cannon fodder. Leaving aside where the North Queensland Storm Financial debacle fits into the scheme of things, the apparently highly respected and sought after financial adviser in New York, Bernie Madoff, and the scam perpetrated by him turns up right when the worldwide financial sector is in disarray.

Madoff, a former NASDAQ chairman and well respected adviser and commentator and Financial Adviser to the wealthy, to the Who's Who of screen and sport stars as well as to businesses and charities, apparently provided stellar investment returns for nearly 40 years.

His revelations shocked the institutions to the core when he admitted that he had not ever invested a dime. He confessed to a ponzi scheme where the returns paid to his first clients for their investments were made from the investments he received from the next. He might have pulled it off until he died but the market finally turned on him to expose the fraud it was. This was Manna to the news men.

I was stunned. Who does anyone trust when these shams are finally exposed? When one even tries to present the true facts about Australian advisers and the work they do the newspaper men, they do not want to hear unless it is sensational. Usually they grasp hold of a sad story and beat it to death until no one knows what to believe.

The media is relentless, the "where there is smoke there's fire" mentality sets in, and those who can make mileage of it join the noise until finally the government of the day has no option but to act to appease the rabble. That is the situation we are in yet again. Respected men like Noel Whittacker and Paul Clitheroe, advisers themselves and authors of bestselling books on money matters are financial journalists. While they attempt to put some balance back into the debate their experienced careful talk can be drowned out by the clamour by a crowd ill informed about the facts.

THE ADEQUACY OF LICENSING ARRANGEMENTS FOR THOSE WHO SOLD THE PRODUCTS

I have not made any comment under this heading as others are better qualified than I am.

THE APPROPRIATNESS OF INFORMATION AND ADVICE TO CONSUMERS CONSIDERING INVESTING IN THESE PRODUCTS AND SERVICES

Recommendation. Providing a client with a 100 page Product Disclosure Document about a product is not going to assist in the decision.

I recommend that an adviser be required to demonstrate that the recommended products will be appropriate to enable the client to meet his goals and objectives, but also state where possible circumstances where the recommended product may fail to do so. For example when recommending gearing programmes that may contain a reasonable worked example of an expected outcome over a given time frame, that a similar worked example of how a negative aspect may result in losses.

I have commented above about the role of financial advisers. I have detailed that too much emphasis is placed upon the compliant nature of how the advice is given rather than to the advice itself.

Advisers recommend products that are considered as likely to satisfy the needs of the customer. Advisers must get off their high horse and recognize that they may not understand every product.

It is unreasonable to expect that a customer will understand the products either just because the adviser attaches a 50 page document called a "product disclosure statement' at the end of the advice document.

Customers rely on advisers to choose products that are suitable just as one expects ones doctor to recommend a treatment that one is not allergic to and that has a reasonable chance of dealing successfully with ones ailments.

I shall not comment further except to reiterate that much more emphasis needs to be placed on the advice given, that it actually is appropriate for the particular customer. Only a change in this area will prevent some advisers who perhaps through lack of experience believes that what he has recommended just cannot go wrong. While an experienced adviser is far less likely to trust what he has been told or to rely on promises no matter who makes them, younger even though well educated advisers are more likely to be gullible.

CONSUMER EDUCATION AND UNDERSTANDING OF THESE FINANCIAL PRODUCTS AND SERVICES

I do not know how consumers are ever likely to understand all products. Most advisers do not. How are they to understand hedge funds, credit default swap securities, fixed interest which most people I come across think are term deposits, or any of the other sophisticated products that have been created and engineered by the big banks and fund managers.

It is essential that consumers are properly advised. It is their adviser who is most likely to give the education they need.

The regulator needs to recognize too that the vast majority of advisers by far have the interest of their customers at heart.

Every effort should be made to encourage consumers to seek advice.

Where customers are believed to be able to take a higher level of risk, licensees need to make sure that they have been properly counseled about the possibility of losses, the possibility that it can take 10 years or more and that in some cases they may never recover. This need is particularly required when customers are over age 55, more so if they are borrowing to invest and even more so if they are borrowing against their homes.

THE ADEQUACY OF PROFESSIONAL INDEMNITY INSURANCE ARRANGEMENTS FOR THOSE WHO SOLD THE PRODUCTS AND SERVICES AND THE IMPACT ON CONSUMERS

Professional indemnity insurance has limits. Some years ago HIH failed leaving doctors and others without cover and caused a crisis in the medical profession.

It is unlikely that the levels of cover needed to meet every possible claim occurring at the same time exists or can be purchased.

If customers are given appropriate advice the need for professional indemnity cover will fall back to what it was originally designed for, that is if an adviser just makes a mistake.

Much more needs to be done to make sure that advice given is appropriate. PI insurance is a last resort for compensation. If considerably more attention was given to the appropriateness of advice the need for PI insurance would diminish.

The effect on consumers will be that they are far less likely to suffer losses as they will not be invested in risk products beyond what is appropriate for them.

THE NEED FOR LEGISLATIVE OR REGULATORY CHANGE

Some changes being suggested by others include that adviser must put the interests first where as the current situation is that one must give appropriate advice. The former will create a minefield of litigation.

I believe that an adviser must consider the needs of a customer as outlined in the role of an adviser at the start of this submission, make recommendations that are appropriate to meet the needs, and use products that are suitable to meet those needs. Reemphasizing those principles will accomplish what this review is about.

RECOMMENDATIONS

When making recommendations to this Committee, I am aware that others may be making recommendations that are quite different from mine. However whether making recommendations to a Committee such as this or to a customer who is seeking financial advice, one needs to have in mind what has caused the need for such advice in the first place, what the goals and objectives are and what is actually practical and achievable.

The enquiry was established because of a number of circumstances but particularly as a result of substantial losses encountered by investors as a result off falls in equity markets not experienced since the great depression of the 1930s, losses to investors attributed to levels of gearing and the role financial advisers may have played in these, some negative media commentary about commission paid to advisers, and a concentrated public campaign by industry super funds calling for a ban on commission.

It is my view that as time passes, people get over the impact of these losses, market and house prices begin to rise again, the environment will be ripe for them all to happen again. I site the shock the community felt at the horrendous losses of property during the Canberra fires a few years ago. One would have thought that the $1000 or so that is required to insure a half million dollar home would not be an obstacle for home owners to properly insure their homes. However the recent Victorian fires, resulting in a terrible loss of life and property have demonstrated how wrong one can be.

Further the fact that in an industry that has tens of thousands of practitioners dealing with people's money will always through up someone who is just not honest or is greedy. Still it is essential that a balance be struck so that the vast majority of honest advisers and industry players are not so burdened by compliance that it becomes practically impossible to operate.

It is also necessary to recognize that the remuneration model that is most commonly used by advisers is one based on the traditional commission system although changes that have occurred would indicate that in fact these have to be approved by customers before they can be paid and in fact are more like a fee for service. It works because it is performance based. It works for customers because if they do not accept the advice they pay nothing. The belief that changing this system to one based upon charging customers for the time spent, will result in different, better or cheaper advice is an illusion.

There are already available to customers all of the options one could possibly want, from a no advice cheap fee as used by industry funds, a fee for service based upon the time spent where plans are charged for whether acted upon or not, to a fee based upon funds invested with adviser service fee based on account balances.

Therefore these are my recommendations to the Committee.

1) With regards to the remuneration of financial advisers, I recommend that customers be allowed to select whatever charging model is their individual preference. That should allow every Australian consumer to find a model that they can afford or one which they are comfortable with. The Committee needs to recognize that models based upon traditional commission models are considerably changed from where commission was charged and paid without any input from customers.

2) I recommend that the Committee require that a clear distinction need to be made as to what constitutes 'commission'. The criticism of 'commission' stems from a failure to clearly identify what is in fact a fee for service, controlled by the customer, and what is commission, a payment made to an adviser which the customer does not control.

3) I recommend that a fee structure be standardized across the financial services product range. For example in the application forms where there is currently a space for the customer to complete which may say, ... "enter the amount to be paid to your adviser. This amount may be from 0 to 5% as agreed between you and your adviser....." I recommend that all products of a similar type ought to have the same range. Alternatively they should simply say, "enter the amount to be paid to your adviser. This may be a percentage of the monies invested or a flat dollar amount.................%, or $......................" By doing this the adviser and the customer can agree what has to be paid and the possibility for bias will be removed.

4) I recommend that customers be permitted to nominate the payment come from the monies invested or come from a personal bank account. I do not believe that the payment is tainted if it comes from the monies invested any more than it is tainted if it comes from a bank account owned by the customer. In some cases the adviser has assisted the customer to establish the bank account. The payment coming from the monies invested reduces the likelihood that the customer has no funds when the payment request is made therefore removing the added cost of bounced cheques or a PDC is dishonored.

5) I strongly recommend that licensees be responsible to ensure that the advice is appropriate for the individual customer. Particularly where customers are considered as "aggressive' or "growth" investors where investments that carry a high level of volatility are recommended, and where customers are over the age of 55 years and are borrowing.

6) With regards to 5 above, I recommend that customers in that category be made aware of the high potential for losses that may take 10 years or more to recover and which in some cases may never recover. I recommend that in those cases a qualified colleague of the adviser giving the advice be present and confirm that the customer is made aware of the level of risk.

7) I recommend that other industries not yet licensed as those in the financial services industry be required to be so licensed at a level appropriate to the risk their customers are exposed to such as real estate seminars or project marketing schemes. Further I recommend that the regulator be ASIC

8) I recommend that advisers be permitted to recommend Industry super funds and that any industry super fund be allowed to be on the APL of licensees. I also recommend that members be permitted to nominate that the payment for advice can be paid out of the funds invested.

9) I recommend that if a licensee is party to the ownership of a product badged for the licensee, that the adviser needs to disclose what the financial benefit to the licensee is, what gets paid to the licensee, and what production levels are required before the adviser shares in the benefit.

10) With regards to 9 above, I recommend that the reasons why the badged product was recommended, what the difference in fee structure is when compared with the base product, and why the adviser did not recommend the base product.

11) I recommend with regards to insurance products that manufacturers be encouraged to design products with a base cost, and allow the adviser to insert the fee structure. For example if the present structure has built into the product a fee of 120% of the first years premium is paid up front with a renewal fee of 25%, it ought to be easily possible to design the product with no fee automatically built in but allowing the adviser to insert 120% and 25% if that is what he wishes to charge.

12) I recommend that advisers who give insurance advice need special extra training in making sure that there is proper disclosure at proposal time, better training at claim

handling time, more training about the consequences of policy ownership and knowledge about the effect of tax on a claim. It may be better to have insurance specialists.

13) I recommend that media commentators be licensed and be required to maintain their accreditation. Where they claim that one type of investment is more appropriate than another, or that one method of remuneration is better than another that this includes appropriate warnings and disclaimers.

14) I recommend that when media commentators state that one type of investment is likely to produce a better outcome than another that it includes worked examples in support of such claim, and that negative outcome examples are also provided.

WHY THE RECOMMENDATIONS ARE APPROPRIATE

The recommendations are appropriate because they address the issues that have given rise to the enquiry in the first place. They address the matter of potential for bias in selecting products, they do not prevent any customer who does not want advice to use low cost no advice models, and they allow customers to choose whatever method of payment that is suitable for individual customers.

The recommendations are appropriate because they address the possibility that customers who have selected high risk volatile investments are properly counseled before entering into such investments.

The recommendations are appropriate because they address the need to make sure that advice given is appropriate to individual customers, and moves some of the compliance issues to the advice given instead of the process of the advice given.

The recommendations about insurance are appropriate because they deal with the issues if cancelling policies by insurers at claim time on the grounds of failure to disclose, false or misleading declarations, and deal with the consequences of proper policy owners at claim time.

WHAT THE RECOMMENDATIONS DO NOT COVER

It has been clear that despite the levels of compliance and supervision of the industry and advisers, from time to time someone will be dishonest. I do not know if there was any dishonest involved with Storm Financial, but certainly the shocking case in the USA involving Bernie Madoff did.

A SBS television programme aired on Tuesday evening of the 23rd. of June seemed to indicate that there were red flags about Madoff going back 10 years or more. Some suggest that the regulator there was starved of funds to properly scrutinize the whole industry. This recommendation does not cover how to deal with this. I do not know how to make people honest.

This recommendation does not cover the matters of adequate PI insurance. However I believe that PI insurance is designed to compensate customers who lose funds caused by negligence of the adviser or the licensee. I believe that in most cases the negligence issue could be caught before the event happened by more scrutiny about the appropriateness of actual advice given.

I make this submission out of a genuine desire to see advice delivered to customers in an appropriate manner, and with a hope that all players in the industry recognize the roles of others. I become quite disturbed at the unjust full on attack on all advisers because of the actions of a few.

I support a freedom to choose environment and believe that the market sorts out the models that do not work or are too costly. The adviser system is absolutely a key stone in the financial services industry. It is a tough job and more encouragement needs to be given not less.

Signed

ROBERT ROSS

APPENDIX

INSURANCE AND SUPERANNUATION COMMISSION

CODE OF PRACTICE

FOR

ADVISING, SELLING AND COMPLAINTS HANDLING

IN THE

LIFE INSURANCE INDUSTRY

CONTENTS

PART I INTRODUCTION

OBJECTIVES

1. This Code is intended to:

   (a) promote the provision of high quality advice in relation to life policies, so that where policies are issued they are appropriate to the needs of the persons to whom they are issued;

   (b) ensure that life companies, life brokers and life insurance advisers maintain a minimum standard of service when dealing with customers in relation to life policies;

   (c) ensure life companies and life brokers play an active role in overseeing the conduct and competence of their life insurance advisers;

   (d) ensure that life insurance advisers are competent in arranging the issue of life policies;

   (e) ensure that life companies and life brokers have adequate procedures for dealing with inquiries and complaints by owners and prospective owners of life policies and by any persons who have an interest in a life policy; and

   (f) ensure that, in the case of disputes that are not able to be resolved under procedures referred to in paragraph (e), owners and prospective owners of life policies and any persons who have an interest in a life policy have access to an adequate external dispute resolution mechanism.

2. The function of this Code is to require:

   (a) the observance of standards to ensure that customers are placed in a position to make an informed choice;

   (b) the establishment of arrangements to ensure that life insurance advisers meet relevant competency standards and follow principles of fair dealing; and

   (c) the establishment of inquiries and complaint-handling mechanisms which ensure that customers are provided with timely and acceptable standards of assistance.

3. Compliance with the requirements of this Code shall be assessed having regard to the principle of utmost good faith that applies to contracts of insurance, as set out in the *Insurance Contracts Act 1984*.

APPLICATION

4. This Code applies to:

    (a) all life companies registered under the *Life Insurance Act 1995*; and

    (b) all life brokers registered under the *Insurance (Agents and Brokers) Act 1984*;

    in respect of their conduct and the conduct of their life insurance advisers.

5. Parts I and IV of this Code commence with effect from 1 September 1995, with the remainder of the Code to commence with effect from 1 January 1996. The provisions of the Code apply in respect of conduct engaged in by life companies, life brokers and life insurance advisers, and policies issued, on or after the date of commencement of the relevant Part. Notwithstanding the above, the complaint-handling and dispute resolution arrangements referred to in Part IV of this Code apply to complaints in respect of events which occurred before the date of commencement of this Code.

6. Where a group life or group superannuation policy is effected and any individual whose life is insured under the scheme, while not the policyowner, is making the effective purchasing decision, all the provisions of the Code will apply as if that individual were the customer. In all other cases where a group life or group superannuation policy is effected, Part II of the Code will not apply.

INTERPRETATION

7. References to the singular include references to the plural and vice versa.

8. For the purposes of this Code:

    "**advice**" means any recommendation, express or implied, made to a customer with respect to the purchase, variation or termination of a life policy, but does not include:

    (a) answers to routine administrative queries;
    (b) factual information about a particular life policy;
    (c) collection of premiums and issue of receipts without other contact;
    (d) placing promotional statements on display, or merely handing them out or posting them;
    (e) merely acting as a facilitator, such as arranging for medical examinations;
    (f) non-personalised advice which merely analyses and reports on life policies and does not involve any needs analysis of a particular customer; or
    (g) merely incidental advice.

    "**agent**", in relation to a life company, means a person in relation to whom an agency agreement is in force with the life company.

"**association**" for the purposes of this Code has the same meaning as "association with" has in respect of life brokers under section 38 of the *Insurance (Agents and Brokers) Act 1984*, except that it also extends to all employers or contractors of life insurance advisers.

"**authorised product**" means a product which a life insurance adviser is authorised by a life company or life broker to give advice on.

"**Commissioner**" means the Insurance and Superannuation Commissioner.

"**complaint**" means an expression of dissatisfaction conveyed to a life company or life broker about a product, advice or service offered or provided coupled with a request to remedy it.

"**customer**" means a person who deals with a life insurance adviser for the purpose of either:

(a) purchasing, varying or terminating a life policy; or

(b) seeking advice regarding a life policy;

and includes a policyowner, a life insured, a prospective policyowner and a person with an interest, or a prospective interest, including under a superannuation policy.

"**dispute**" means an unresolved complaint.

"**life company**" means a company registered under the *Life Insurance Act 1995.*

"**life insurance adviser**" is a natural person who, for reward, provides advice in respect of, or arranges, life policies.

"**life broker**" means a person who is for the time being registered under Part III of the *Insurance (Agents and Brokers) Act 1984* in respect of life insurance business.

"**life policy**" for the purposes of this Code has the same meaning as in the *Life Insurance Act 1995.*

"**merely incidental advice**" is advice provided by a solicitor, accountant or other adviser in circumstances where that solicitor, accountant or adviser:

(a) does not provide a discrete advisory service in respect of life policies;

(b) does not receive a fee, commission or other benefit for providing such advice; and

(c) attaches to their advice a written recommendation that the customer seeks the advice of a life insurance adviser.

"**multi-agent**" is an agent who is authorised to act as a life insurance adviser by more than one life company.

"**product**" means a particular kind of life policy.

"**risk policy**" means a policy which provides no surrender value and no benefit payable on a specified date or dates.

"**sale**" means a customer's request, expressed in writing, for the issue of a new life policy, or for the variation of an existing life policy where that variation results in increased expenditure by the customer.

"**sell**" means obtain a sale, and sold and selling have corresponding meanings.

"**superannuation policy**" for the purposes of this Code has the same meaning as in the *Life Insurance Act 1995*.

"**termination**" means the giving by a customer of an instruction to terminate a life policy.

"**unsolicited contact**" means contact between a life company, life broker or life insurance adviser and a customer made where there has been no previous contact between the parties, but excludes a meeting which has been initiated by the customer.

PART II ADVISING AND SELLING PRACTICES

This Part specifies standards of practice that life companies and life brokers are to observe and to require their life insurance advisers to observe.

EXEMPTIONS

9. The requirements of this Part do not apply to risk policies where the annual premium payment under such policies is less than $500 in total per life insured.

DISCLOSURE OF CAPACITY

10. At the earliest reasonable opportunity during advising or selling, a life insurance adviser must provide written advice to a customer of:
    (a) the name and address of the life insurance adviser;
    (b) the means of remuneration of the life insurance adviser, who is responsible for the life insurance adviser's conduct and whether the life insurance adviser's primary duty is to the customer or the life company; and
    (c) if the life insurance adviser is only authorised to sell or advise on a restricted range of products - a statement to that effect.

SAME-DAY SALES

11. A life insurance adviser must not sell a policy (other than a risk policy) to a customer where that life insurance adviser has already sold another policy (other than a risk policy) on the same site (eg. work place, flats) or to someone of the same community group (eg. sporting club, ethnic group), within the previous 24 hours. Such sales will be permitted where the sale does not result from an unsolicited contact. Where a same-day sale occurs, this must be clearly indicated on the application/proposal form.

FACT FIND AND NEEDS ANALYSIS

12. In all cases where advice is given by a life insurance adviser, he or she must:
    (a) analyse the needs, circumstances and objectives of the customer to ensure that advice is given on a reasonable basis and is not inappropriate; and
    (b) take reasonable steps to ensure that the customer can sufficiently comprehend the advice and the basis for the advice to place the customer in a position to make an informed choice.

13. Unless the customer chooses (in terms of paragraph 17 of this Code) not to provide information, a life insurance adviser must undertake a fact find, that is, he or she must obtain sufficient information from the customer, subject to paragraph 16 of this Code, to satisfy the requirements of paragraph 12. This information would generally include, where relevant:

    (a) the customer's financial and family circumstances;

    (b) details of the customer's needs and objectives for income, capital growth, security, liquidity, and the time period the customer is planning for;

    (c) individual investment preferences and aversion or tolerance to risk;

    (d) the level and type of retirement benefit which the customer (and domestic partner) can currently expect to receive;

    (e) other customer details such as employment security, age, partner's age, expected retirement age and partner's expected retirement age.

    Where the customer has indicated prior to the fact find or in its early stages that his or her interest extends only to risk policies, the fact find may not need to proceed through (b) to (e) above.

14. The information obtained during a fact find must be recorded in writing, the resultant document being referred to in this Code as a Fact Finder. The Fact Finder must be signed by the life insurance adviser as a record for the purposes of paragraph 40.

15. In satisfying the requirement in paragraph 13, a life insurance adviser may utilise information previously collected from the customer, provided that the customer agrees that the information remains relevant and up to date.

16. Where the customer and the life insurance adviser agree that only certain types of products or identified objectives are to be considered, the life insurance adviser need only obtain, and the Fact Finder need only contain, information that is relevant to the types of products or objectives under consideration. A reference to this agreement must be included in the Customer Advice Record referred to in paragraph 18.

INCOMPLETE FACT FIND

17. Where the customer chooses not to provide all information requested by the life insurance adviser for an effective fact find, the customer must be advised of the implications of not allowing an effective fact find and needs analysis to be conducted. The Customer Advice Record (referred to in paragraph 18) must contain:

    (a) a specific warning that appropriate advice may not be able to be given without complete information; and

    (b) a statement that, by not providing sufficient information, the customer risks making a financial commitment to a life policy that may not be appropriate to his or her needs.

CUSTOMER ADVICE RECORD

18. The customer must be provided with a copy of a written Customer Advice Record containing the information prescribed in paragraphs 16, 17 and 19 to 25 of this Code, no later than at the commencement of the cooling-off period.

Requirements where advice is given

19. Where advice is given, the Customer Advice Record must contain an explanation of the life insurance adviser's status and obligations that includes:

    (a) the name and business address of the life insurance adviser;

    (b) the types of products which the life insurance adviser is authorised to give advice on, arrange or sell and the authorising life company(ies) or life broker which he or she represents;

    (c) a description of any association the employer or contractor of a life insurance adviser has with the life company(ies) whose product(s) is/are recommended; and

    (d) the means of remuneration of the life insurance adviser, who is responsible for the life insurance adviser's conduct and whether the life insurance adviser's primary duty is to the customer or the life company(ies).

20. Where advice is given, the Customer Advice Record must also contain the basis for advice including:

    (a) a brief summary of the information and material on which the advice is based;

    (b) the type(s) of product(s) that was/were identified as suitable and an explanation of why that/those type(s) of product(s) is/are likely to satisfy the customer's identified needs and objectives;

    (c) the name(s) of the particular product(s) that is/are recommended;

    (d) an explanation of the reasoning that led to the recommendation and how the particular product(s) is/are likely to satisfy the identified needs and objectives of the customer;

    (e) a statement in the Customer Advice Record that a copy of the Fact Finder is available on request; and

    (f) any additional information required by paragraphs 21, 22 and 24.

21. If advice is given that does not, either wholly or in part, address the customer's identified needs and objectives, this must be documented in the Customer Advice Record.

22. If the customer elects to purchase a life policy that differs from the life insurance adviser's recommendation, or elects only to receive advice about a more limited range of products than the life insurance adviser offers (other than in terms of paragraph 16), the Customer Advice Record must contain:

    (a) information about this election; and

    (b) a statement that, by making this election, the customer risks making a financial commitment to a life policy that may not be appropriate to his or her needs and objectives.

Requirements where advice is not given or fact find is not undertaken

23. Where no advice is given to the customer, or no fact find is undertaken, the customer must be advised of any implications, and the Customer Advice Record must contain:

    (a) a specific warning that a life policy sold without the completion of a fact find may not be appropriate to the customer's needs; and

    (b) a statement that, by not receiving advice, the customer risks making a financial commitment to a life policy that may not be appropriate to his or her needs and objectives.

Requirements where an existing life policy is replaced

24. Where termination of an existing life policy and sale of a new life policy is advised by a life insurance adviser, the advice must be appropriate and have a reasonable basis and all reasonably foreseeable and relevant consequences of the change must be listed in the Customer Advice Record, including:

    (a) termination charges for the existing life policy;

    (b) entry/establishment charges for the proposed replacement life policy;

    (c) any duplication of initial costs; and

    (d) any loss of benefits, temporarily or otherwise, that may arise when replacing the existing life policy.

    Upon request and with the consent of the policyowner, a life company must provide to the life insurance adviser the necessary information to enable compliance with subparagraphs (a) and (d) within 20 working days.

Completion and retention of the Customer Advice Record

25. The Customer Advice Record must begin with a clear boxed statement that this is an important document that the customer should read. It must also invite the customer to contact the life insurance adviser or life company or life broker if he/she disagrees with, or does not understand, the Customer Advice Record. The opening statement should also remind the customer of the 14 day cooling-off period.

26. The Customer Advice Record must be dated and signed by the life insurance adviser and forwarded to the life company(ies) of the recommended product(s), or the life broker. The life company(ies)/life broker must retain the Customer Advice Record signed by the life insurance adviser. The Customer Advice Record must be made available by the life company or life broker to the Commissioner or the relevant external dispute resolution mechanism promptly following request.

APPLICATION FORMS

27. Life companies must ensure that their application/proposal forms make appropriate provision for a signed acknowledgement by the customer that either:

    (a) the customer provided information requested by the life insurance adviser to form the basis of a complete fact find and needs analysis, and elected to purchase the life policy(ies) recommended by the life insurance adviser; or

    (b) the customer chose not to provide all information requested by the life insurance adviser, and understands that by not providing sufficient information, the customer risks making a financial commitment to a life policy that may not be appropriate to his or her needs; or

    (c) the customer elected to purchase a life policy that differs from the life insurance adviser's recommendation, or elected only to receive advice about a limited range of products, and understands that by making this election, the customer risks making a financial commitment to a life policy that may not be appropriate to his or her needs and objectives; or

    (d) the customer was not given any advice, or no fact find was undertaken, and the customer understands that by not receiving advice, the customer risks making a financial commitment to a life policy that may not be appropriate to his or her needs and objectives.

PART III TRAINING AND COMPETENCY

This part specifies requirements of life companies and life brokers regarding the training and competency of life insurance advisers.

BASIC COMPETENCIES

28. Prior to the commencement of life insurance adviser registration, a life company or life broker must ensure that a life insurance adviser authorised on its behalf has adequate knowledge to enable him or her to demonstrate the following competencies:

    (a) the requirements of this Code, including complaint handling mechanisms;

    (b) how to conduct a fact find and needs analysis and complete a Customer Advice Record; and

    (c) legal requirements under all relevant legislation, together with the requirements of Insurance and Superannuation Commission circulars.

    The necessary basic competencies applicable from the commencement of life insurance adviser registration will be determined by the then established Registration Board.

PRODUCT-SPECIFIC COMPETENCIES

29. A life company or life broker must ensure that a life insurance adviser receives sufficient information and/or training to enable him or her to satisfy the following competencies for each specific company product that the life insurance adviser has been authorised to sell on its behalf:

    (a) an adequate knowledge of the relevant product, including (where the product is investment linked) knowledge of the risk and return profiles of relevant securities;

    (b) the ability to clearly explain the product and product-related material;

    (c) an adequate knowledge of any specific laws which affect the product; and

    (d) an adequate knowledge of the life company's systems, forms and procedures for that product, including procedures in the case of a claim or termination.

Multi-Agents

30. Each life company must provide sufficient information and/or training to ensure that multi-agents are competent to sell those company-specific products which the multi-agent is authorised to sell.

CONTINUING EDUCATION REQUIREMENTS

31. A life company or life broker must ensure that its life insurance advisers receive adequate continuing education, to enable them to continue to meet competency requirements.

PART IV INQUIRIES, COMPLAINTS AND DISPUTES

All life companies and life brokers must handle inquiries in a timely manner, must have internal complaint-handling mechanisms which meet minimum standards and must ensure that complainants have access to effective and independent external and free dispute resolution mechanisms.

INTERNAL INQUIRY AND COMPLAINT ARRANGEMENTS

32. A Customer of a life company or life broker is entitled to a response to written requests for:

    (a) information about existing policies, including requests about the surrender value;

    (b) variation of life policies; or

    (c) termination of life policies;

    within 20 working days of receipt of the inquiry.

33. Where a life company or life broker is unable, on reasonable grounds, to respond to a customer's written inquiry or request within 20 working days the customer is entitled to be advised of that fact as soon as is practicable within 20 working days and to be given an indication of when a response will be made.

34. Each life company and life broker must establish an internal complaint-handling mechanism. The mechanism must:

    (a) be free of charge to the complainant;

    (b) be open to all persons who have an interest in a life policy;

    (c) be capable of addressing all possible complaints against the life company or life broker;

    (d) have documented procedures including time lines for making a decision and informing the complainant of those procedures in relation to a complaint;

    (e) have a complaint dealt with by an officer of the life company or life broker who has authority to resolve most complaints without further referrals within the life company or life broker;

    (f) provide written advice to the complainant of a decision and, unless the decision has been resolved to the satisfaction of the complainant, of the reasons for the decision;

    (g) record decisions, reasons for decisions and maintain appropriate statistics; and

(h) provide information to the complainant at the outset on the availability of the external complaint-handling mechanism and have arrangements for referral of relevant complaints to an external mechanism if the complaint is not resolved internally. The complainant must be reminded in writing of the availability of the external complaint-handling mechanism in the event that the claim is rejected in whole or in part.

35. All complaints should be resolved by the internal complaint-handling mechanism within 45 days of lodgement. However, where there are special circumstances relating to the complaint such that it is not reasonable for it to have been resolved in that period, the life company or life broker must inform the complainant of the reasons for the delay and that the complainant may, if the complaint has not been resolved within 90 days of lodgement, then take it to the relevant external dispute resolution mechanism in terms of paragraph 37 of this Code.

36. If the internal complaint-handling mechanism has not resolved a specific complaint within 90 days, the life company or life broker must inform the complainant of the reasons for the further delay and that the complainant may take the complaint to the relevant external dispute resolution mechanism referred to in paragraph 37 of this Code.

EXTERNAL DISPUTE RESOLUTION MECHANISMS

37. Each life company and each life broker that offers insurance directly to the public must be party to an external dispute resolution mechanism which:

a) has the unrevoked approval of the Commissioner;

b) does not consider a complaint or dispute unless it has first been lodged with the relevant life company or life broker and:

   i) has been resolved by the life company or life broker, but not to the satisfaction of the complainant; or

   ii) has not been resolved by the life company or life broker and 90 days have elapsed since lodgement with the life company or life broker;

c) provides annual reports to the Commissioner and the Minister for Consumer Affairs (the Commissioner may require a specific format and content for annual reports); and

d) reports any systemic, persistent or deliberate conduct (including that of life insurance advisers) that infringes the requirements of this Code to the Commissioner and to the relevant life company(ies) or life broker(s) as soon as they are identified.

38. Before granting an approval under paragraph 37, the Commissioner must be satisfied that the mechanism will:

(a) operate free of charge to the complainant;

(b) cover a sufficiently broad range of complaints;

(c) be independent of the parties to the complaint;

(d) be overseen by a body which includes consumer representation (appointed or approved by the Minister for Consumer Affairs) and a delegate of the Commissioner;

(e) have procedures which accord with the principles of natural justice (including written reasons for decisions);

(f) make decisions by reference to what is fair in all the circumstances, observes applicable law, relevant judicial authority and this Code, and has regard to good life insurance practice;

(g) have appropriate published procedures, including suitable standards of timeliness;

(h) be effectively promoted;

(i) have adequate resources;

(j) obtain observance by life companies and life brokers of its decisions;

(k) have adequate remedies available to it;

(l) maintain and publish appropriate statistics on its operations; and

(m) provide to the Commissioner, and to relevant industry associations, details of the decisions made in respect of all complaints, or a representative selection of complaints, including the reasons for the decisions but excluding information that would identify any of the parties to the complaint.

39. The Commissioner may revoke an approval granted under paragraph 37 if he/she is satisfied that a dispute resolution mechanism does not meet the conditions referred to in paragraph 38.

PART V MONITORING AND REPORTING

40. Responsibility for compliance with this Code rests with individual life companies and life brokers. Each life company and life broker must have appropriate documented procedures in place to monitor the performance of its life insurance advisers in relation to all aspects of this Code.

41. The monitoring procedures required by paragraph 40 must achieve a standard acceptable to the Commissioner. Without limiting the matters that the Commissioner may consider in determining whether a life company or life broker meets the requirements of paragraph 40, the Commissioner must be satisfied that procedures are in place to:

    (a) ensure that fact finds are undertaken in line with the requirements of this Code;

    (b) monitor the appropriateness of advice provided by its life insurance advisers to customers;

    (c) closely monitor complaints about the conduct of life insurance advisers;

    (d) ensure that there are appropriate pre-recruitment screening procedures;

    (e) verify that life insurance advisers are trained to the necessary level of competence; and

    (f) ensure adequate documentation is maintained.

42. Each life company and life broker must maintain adequate records including:

    (a) internal complaint-handling mechanism statistics;

    (b) all conduct (including that of life insurance advisers) known to the life company or life broker that infringes this Code including a record of systemic or repetitive infringements;

    (c) a record of remedial action and its effect; and

    (d) a record detailing training of life insurance advisers.

43. All serious or persistent conduct infringing this Code must be referred to the life company's Compliance Committee (or to the Board of the life company), or to the Directors or Principals of the life broker, so that systemic problems or problems with particular life insurance advisers can be identified and rectified.

44. Where a life company or a life broker becomes aware of a material breach of this Code, it must check the appropriateness of the procedures applicable, and of relevant policies previously issued through that life insurance adviser during the three-year period preceding the date on which it became aware of the breach (as noted in paragraph 5, this obligation only applies to policies issued on or after the date of commencement of the Code) and take remedial action where appropriate.

45. A life company or life broker must provide regular reports to the Commissioner on its compliance with this Code.