

20 August 2009

Dr Shona Batge  
Committee Secretary  
Parliamentary Joint Committee on Corporations and Financial Services  
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Parliament House  
Canberra ACT 2600  
Australia  
Email: [corporations.joint@aph.gov.au](mailto:corporations.joint@aph.gov.au)

Dear Dr Batge,

**Inquiry into Financial Products and Services in Australia ('Inquiry') – ING Australia (INGA) submission**

ING Australia Limited (ING Australia) welcomes the opportunity to provide comments to the Inquiry.

ING Australia is one of Australia's leading fund managers, life insurers and superannuation providers. We are a joint venture between the global ING Group, which owns 51%, and one of Australia's major banks, ANZ, which owns 49%. ING Group is a global financial services company providing banking, investments, life insurance and retirement services to more than 85 million customers in 50 countries around the world. ANZ is one of the ten largest and most successful companies in Australia and the number one bank in New Zealand. It employs more than 44,000 staff and operates in more than 30 countries.

ING Australia also wholly owns four financial advice groups (and partially owns one other) that provide financial advice to retail consumers and who each hold an Australian Financial Service Licence (AFSL) to provide personal advice. They are:

1. Financial Services Partners;
2. ING Financial Planning;
3. Millennium3;
4. RetireInvest; and
5. Sentry (37.5 percent owned by ING Australia).

We provide a broad range of financial products and services through an extensive network of professional financial advisers, as well as directly to customers. We currently employ more than 2,200 staff. Our advice groups collectively represent around 10 percent (1,400) of Australia's financial advisers. We also have business relationships with ANZ Financial Planning (100 percent owned by ANZ) and thousands of other financial advisers who recommend INGA products and services.

ING Australia is a member of the Investment and Financial Services Association (IFSA) and we have contributed to and support their submission to your inquiry.

Against this background, ING Australia has a vested interest in ensuring that we do not place either our parent entities' or our own reputation at risk. We embrace:

- strong and robust risk and compliance systems supported by a positive risk and compliance culture;
- strong governance apparatus that is geared toward ensuring risks and conflicts are appropriately managed; and
- provision of the highest quality products and services to clients.

Despite the financial turbulence arising from the global financial crisis, we have worked closely with our parent entity in Amsterdam to roll out our part of a global risk and compliance training programme costing ING Group approximately €9 million.

Australia's excellent regulatory framework and corresponding risk management systems have meant that many Australian financial institutions have been spared the worst excesses of the global financial crisis. This presents Australia with an opportunity to become a global financial hub.

Given the breadth of our business, we have a strong interest in the carriage of your Inquiry and the outcomes from it.

#### **Our comments on the Terms of Reference**

It is not a matter for ING Australia to speculate as to why Opes Prime, Storm Financial or any other financial advisory group or financial product provider may have collapsed. These companies are not part of the ING Australia group of companies. In any case, ASIC investigations are still underway. Your Inquiry's Terms of Reference also allude to a number of potential causative factors. It is these items to which our submission will focus.

Despite the above, we are very concerned that the collapse of the two firms mentioned has caused serious reputational damage to financial advisers and product providers generally. As the advice industry moves to adopt a *modus operandi* that seeks to be more in line with a profession, the collapse has brought the need to "raise the bar", with respect to standards, into even sharper focus. While we support the Inquiry, we urge a measured approach. Storm Financial and Opes Prime represent only a very small minority of financial advisers and product providers. We caution that the practices that prevailed in these companies are not representative of the entire industry, nor are the circumstances and deficiencies that led to their collapse.

In terms of the scope of the Inquiry, it is limited to financial products and services outside superannuation. We support this approach since none of the collapses involved superannuation, which is a highly regulated segment of the financial services industry. Moreover, superannuation is already the subject of a separate review. We believe that the Inquiry should also exclude life insurance products from scope. Life risk products that focus primarily on risk protection are inherently different to investment style products largely because life insurers are subject to prudential regulation under the Life Insurance Act. Life insurers are required to be registered by APRA. Life insurance contracts are also highly regulated under the Insurance Contracts Act which protects consumers. Like superannuation, we believe that an investigation of life products is not relevant in terms of shedding light on the two collapses.

Our submission considers some of the items raised in the terms of reference and the matter mentioned above, they include:

1. The role of financial advisers;
2. The general regulatory environment for financial products and services;
3. Conflict management, adviser remuneration, disclosure and training;
4. The global financial crisis and lessons learnt; and
5. The need for legislative and regulatory change.

### ***1. The role of financial advisers***

<b>Key message: Institutional ownership of financial advisory firms benefits consumers</b>
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Saving, wealth accumulation, wealth protection and retirement are issues that Australians are increasingly concerned with given the increasing pressures for individuals to undertake responsibility for their own financial security and objectives. The complexity of changes to rules regarding retirement and other savings could have an impact on an individual's retirement and non-retirement savings. Many people have required the assistance and guidance of an adviser to negotiate these complexities. This is part of the value proposition of financial advisers.

ING Australia has a very strong interest in ensuring the advice provided by financial advisers authorised under the ING advice groups is appropriate for clients. We seek to achieve this outcome in a number of ways. One is to ensure that the financial advisers provide a quality professional service that is transparent and represents good value to clients, and secondly, we invest heavily to ensure the products and platforms that deliver these products to investors are of the highest quality.

There has been ongoing criticism regarding the quality of advice, perceived conflicts of interest in both commission payments and related entity recommendations. Media coverage and criticisms have tended toward making generalisations about financial advisers. While we understand that institutional ownership of advice groups brings with it an obvious conflict of interest, we believe the benefits of this structure outweigh an appropriately managed conflict. Our approach to managing conflicts is outlined in section 3.2 of this submission.

ING Australia believes that institutional ownership of financial advisory firms can assist in ensuring quality advice by providing the operational framework, expertise and support (both financial and professional). Large institutions are less likely to put at risk their reputation and brand and they have the scale and resources to ensure that their products and services meet a very high standard and comply with their legal obligations. Indeed, our philosophy is to, where we can, go beyond compliance since we believe that, over time, competitive advantage can be gained by being a leader in risk management and compliance. It positions us so we build sustained consumer confidence and trust in our brand and the products and services underlying it.

Many consumers seek the comfort and security provided by institutional ownership of financial advisory firms, and also the products provided by these institutions. ING Australia provides this.

## ***2. The general regulatory environment for financial products and services***

**Key message: ING Australia supports enhanced regulations that can improve affordability and accessibility of quality advice**

ING Australia supports the overall policy underpinning the Corporations Legislation Amendment (Financial Services Modernisation) Bill 2009 to address apparent regulatory deficiencies relating to margin lending products.

The Bill when passed will introduce new conduct and disclosure requirements for both providers and financial advisers of margin lending products, and bring margin lending products into line with other financial products and services under financial services law. These are significant new reforms, and will go some way to addressing any regulatory gap for these products. Any further tightening of regulation or introduction of further significant new reforms, particularly where they relate to highly prescriptive banning of certain activities, should not be taken lightly. We urge a measured and consultative approach in this regard.

In particular, ING Australia believes in improved legislation that can enhance affordability and accessibility of quality advice. Therefore, while ING Australia continues to support the Financial Services Reform Act (FSR), we are also of the view that FSR can be improved to achieve such an outcome. Consistent with this, for example, we believe there is an opportunity to improve the quality of financial advisers and the advice proposition generally by fortifying requirements for obtaining an Australian Financial Services Licence (AFSL). This is further outlined in section 5 of this submission.

Additionally, we are also supporters of Australia's prudential framework for superannuation and life insurance products. Our financial services laws have helped deliver an industry that is fair, transparent and that is conducted with a high level of integrity compared to many other countries. We believe our prudential regulation has delivered a world class superannuation system and insurance products that are relatively safe, and that can meet their obligations. For life insurance, a strong regulatory environment has helped build a solid foundation in which to address Australia's underinsurance problem. Moreover, ING Australia, being a large institution with capital backing, has the resources to ensure the good compliance systems that are properly supported and implemented.

We are supportive of the efforts of our regulators, ASIC and APRA. While we support a strong, diverse and competitive industry, we would also welcome the opportunity to work more closely with our regulators to help identify some of the risks associated with such an industry, and assist them to develop a risk based monitoring and supervision capability. We are supportive of the IFSA's (our industry body), recommendations in this area.

## ***3. Conflict management, adviser remuneration, disclosure and training***

An area that has received an enormous amount of attention in the media is how conflicts of interest have been managed by financial advisers generally. We are conscious of criticisms regarding the quality of advice, perceived conflicts of interest in both commission payments and related entity recommendations.

ING Australia takes conflict management very seriously (see section 3.2). We offer comments on the following, which are key areas that form part of the Parliamentary Joint Committee's Terms of Reference:

- 3.1 Appropriate adviser remuneration incentives;
- 3.2 Management of conflicts of interest;
- 3.3 Clear concise and effective disclosure; and
- 3.4 Adequate adviser training.

### **3.1 Appropriate adviser remuneration incentives**

**Key message: Remuneration arrangements should be transparent and give investors control, choice and flexibility**

ING Australia believes that financial advisers should be suitably remunerated for the professional service provided, but it is also imperative that advice should be affordable. An appropriate remuneration level and method of payment should be fully disclosed and agreed between the consumer and the financial adviser based on the service provided. We support actions that will increase confidence in financial advice. Greater transparency, control, choice and flexibility of payments for consumers for the provision of advice will help increase this confidence.

We accept community concerns with respect to a 'commissions' based remuneration for superannuation and managed investment products. For this reason, we are committed to moving to a remuneration arrangement whereby clients only pay for the level of advice and services they receive and can clearly understand what they are paying for. We will seek to ensure that clients are also able to easily turn off any advice fees if they forgo advice services or cease the relationship with their adviser.

**Key message: ING Australia supports the IFSA Superannuation Member Charter**

Consumers should be able to determine remuneration arrangements that suit them best, which are based on their circumstances and ability to afford the advice. We welcome recent announcements by our industry body IFSA to achieve this objective. The draft Charter can be located at [www.ifsa.com.au](http://www.ifsa.com.au).

### **3.2 Management of conflicts of interest**

**Key message: INGA believes in good conflict management to ensure good saving and investment outcomes for consumers**

Good advice that leads to good outcomes for consumers can be achieved by having good conflict management policies that lead to appropriate incentives for advisers and product providers. As we transition to the remuneration arrangements described above, ING Australia currently manages our conflicts adequately by, among other things:

- Rigorous expert research of products and platforms on our advice group's approved product lists;
- Rigorous product research and due diligence to ensure quality investment choice on our product platforms;
- Clear, concise and effective disclosure within PDS's, SoAs and FSGs;

- Choice of flexible remuneration arrangements; and
- A programme for educating investors.

We consider that our current regulatory system already requires providers of financial services to have adequate conflict management policies in place and is therefore sufficient.

### ***3.3 Clear, concise and effective disclosure***

As mentioned, ING Australia supports empowering consumers to choose the remuneration model that suits them. We believe clear, concise and effective disclosure will boost the confidence level of consumers. We support the disclosure requirements under FSR and the 'Standards' established by our industry body (IFSA) around soft dollar payments and shelf space fees. The total fees that we charge are now clearly discernible by consumers who receive our Statements of Advice and Product Disclosure Statements, but there can be improvements to the law as it currently leads to disclosures that can be too lengthy, that can actually lead to reduced understanding by consumers.

The Financial Services Working Group (FSWG) is currently looking to simplify and shorten PDS's for the benefit of investors. We note the FSWG are currently considering the use of stark language in shorter PDS's to help crystallise client understanding of risks associated with various investment decisions, which we support. We urge that the project be extended to simplifying Statements of Advice and expediting its work on PDS's for all financial products. We have suggested a number of areas where the law could be improved in section 5 below.

### ***3.4 Adequate financial adviser training and raising the standard of the advice profession***

<p><b>Key message: ING Australia supports a strong professional body for financial advisers</b></p>
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ASIC's RG 146 sets out training requirements for AFSL holders and financial advisers. We believe that current adviser training requirements are too low and that standards could be raised via the establishment of a professional financial advice body recognised by the government. While the terms and conditions of membership would be a matter for the professional body, it should ensure that advisers are properly accredited and their professional standards monitored and elevated on an ongoing basis. We are very keen to work closely with such a body to raise the standards of professionalism and ethics of the advice community which we expect would include minimum training and benchmarks for industry experience.

Significantly, such a professional body would be empowered to expel members who do not meet its benchmarks for competence and code of conduct. Moreover, only planners that are members of the professional body should be able to call themselves a "financial adviser" or a "financial planner".

ING Australia believes that the right training and experience is essential to raise the quality of advice and the reputation of the profession. It is also consistent with our view to boost the confidence of consumers.

#### ***4. The global financial crisis and lessons learnt***

**Key message: There are good lessons from the global financial crisis, but also opportunities**

The global financial crisis and the resultant market volatility have placed significant pressures on many businesses and investors. Storm Financial and Opes Prime collapsed in an environment where the stock market has fallen by more than 50% from its peak in a little over a year. While much of the focus has been on the role of adviser remuneration, it is clear that business collapses and losses by investors cannot be avoided in times of adverse economics conditions.

We understand that there may be significant policy considerations for Government on whether regulations need to be tightened to minimise the risks of businesses failing and investments performing poorly or to educate people so they understand the risks associated with making an investment. We believe that there can be significant market distorting effects that come with the introduction of significant new reforms and regulatory actions. More regulation could also come at the expense of market innovations. Government should carefully consider these issues, and more importantly, consult extensively before making decisions about reforms and actions.

ING Australia is of the view that the introduction of credit reform regulations already goes a long way toward closing the gap with what used to be an unregulated segment of the market.

We believe that our regulatory system affecting advice and investments is fundamentally sound. We make some recommendations about how they could be refined to improve consumer confidence and accessibility (see section 5 below).

#### ***5. The need for legislative and regulatory change***

As mentioned, we are of the view that fundamentally, the Australian regulatory system governing financial services and products is sound and does not require significant reform. ING Australia strongly supports FSR. There are, however, areas that could be improved to bolster consumer confidence, reduce costs and improve efficiencies.

We make four further recommendations where current law could be improved:

- 5.1 Stronger AFSL Licensing Requirements;
- 5.2 There is a need to create legislative certainty for limited scope advice;
- 5.3 Better disclosure in Product Disclosure Statements; and
- 5.4 Better disclosure in Statements of Advice.

##### ***5.1 Stronger AFSL Licensing Requirements***

It would appear that it is too easy to obtain and retain an Australian Financial Services License. We believe that licence requirements could be made stronger to ensure that licensees have to meet higher minimum standards so that they have the skill and ability to provide financial products and services. This may also include consideration of whether licensees should be required to have appropriate capital backing. We would expect that any proposals to strengthen the licensing regime would be developed in full consultation with the industry.

## ***5.2 There is a need to create legislative certainty for limited scope advice***

A policy area that has been raised is whether to establish clear regulatory distinction between product sales and advice, though in effect, our current law already allows for this approach. By way of an overview, we support the current prohibitions on product hawking and restrictions around advertising of financial products and services. We also support current law in relation to the provision of general advice.

In an effort to make limited scope advice more generally available in the superannuation arena ASIC has recently provided class order relief from the personal advice requirements of s945A of the Corporations Act to make it easier for trustees of superannuation funds to give intra fund advice.

We believe a similar type of relief needs to be extended beyond superannuation intra fund advice so that the legal requirements for disclosure, in circumstances where a client seeks limited advice from an appropriately licensed adviser, are made more cost effective and efficient for the adviser and the client. On balance, you would expect the seeking of limited scope advice in these circumstances may not necessarily require the full fact find as currently envisaged by s945A but instead only a partial one.

Our industry associations IFSA and the FPA have already proposed a legislative solution. We recommend that the solution be considered.

## ***5.3 Better disclosure in Product Disclosure Statements***

We support the work currently being undertaken by the Financial Services Working Group which is looking at making PDS's shorter. While PDS's for margin lending and superannuation products appear to be given priority, the project should be fast tracked for other financial products.

We have supported the government's reform in introducing incorporation by reference for PDS's, which helped us reduce one of our PDS size by 33% with enhanced consumer experience, we believe more can be done to reform, for instance:

- the fee table, which is leading to unnecessarily long and complex disclosure documents; and
- the supplementary PDS provisions, which is creating uncertainty around the legal status of documents incorporated.

## ***5.4 Better disclosure in Statements of Advice***

The Financial Planning Association has been working on proposals to make statements of advice simpler and to streamline existing regulations. We believe the need to streamline legislative requirements to make the advice process less costly should also be given some priority.

## 6.Summary and Conclusions

Our summary and conclusions are as follows:

### 6.1 ING Australia supports institutional ownership of advice groups.

- ING Australia owns advice groups that collectively represent around 10% of Australia's financial planners; and
- As a large player, we have the resources to support quality advice, best practice risk management and compliance systems.

### 6.2 ING Australia supports enhanced regulations that can improve affordability and accessibility of quality advice.

- While we support FSR, and our prudential framework is strong, we believe FSR can be improved to make advice more affordable and accessible;
- It would appear that it is too easy to obtain and retain an Australian Financial Services Licence. We believe that licence requirements could be made stronger to ensure that licensees have to meet higher minimum standards so that they have the skill and ability to provide financial products and services. This may also include consideration of whether licensees should be required to have appropriate capital backing. We would expect the development of any proposals to strengthen the licensing regime would occur in full consultation with the industry;
- We support the provision of legislative certainty to allow for limited scope advice;
- Better disclosure in Product Disclosure Statements and better disclosure in Statements of Advice;
- We support new regulation for margin lending and other credit products;
- We caution against overly prescriptive regulation and particularly the banning of different types of remuneration arrangements. Australia's economic resilience in the face of the current crisis does not warrant high levels of prescription; and
- We recognise there are risks in our industry and welcome the opportunity to work closely with our regulators to identify and address these risks.

### 6.3 Remuneration arrangements should be transparent, give investors control and choice.

- We are strong supporters of choice of remuneration methods as this empowers the consumer and builds consumer confidence;
- We accept that there are concerns raised with respect to conflicts associated with commissions in investment and superannuation products;
- In response to these concerns, we are committed to moving to a remuneration arrangement where the client in superannuation and investments products only pays for the level of service they receive and clearly understand what they are paying for;
- Clients should also be able to turn off the payment if they cease the relationship with the adviser; and
- Clients in superannuation and investments products should be given transparency, control and choice of remuneration arrangements.

6.4 ING Australia supports the IFSA Superannuation Member Charter.

- We support the principles set out in the IFSA Superannuation Member Charter that sets out the new remuneration arrangements. They could apply to other investment products;
- We agree with IFSA's decision to not include life insurance in its Charter as it is different to investment style products; and
- We believe in self regulation via a professional body over prescriptive regulations. Prescriptive regulations can be costly, inhibit innovation and can lead to market distortions.

6.5 INGA believes in good conflict management to ensure good saving and investment outcomes for consumers.

- While we intend to transition to the remuneration arrangement described above, we believe that we currently manage our conflicts; and
- The importance that institutions place on defending their reputation means establishing rigorous risk management systems is paramount.

6.6 ING Australia supports a strong professional body for financial advisers.

- We believe a strong professional body for advisers will raise the quality and reputation of the advice profession generally; and
- We support moves to raise the professionalism of financial planners. For instance, we agree that only planners that are members of the professional body should be able to call themselves a "financial adviser" or a "financial planner".

6.7 There are good lessons from the global financial crisis, but also opportunities.

- Risk management systems should be tested against stresses placed on business;
- Government responses to recent collapses should be measured against the unprecedented global economic downturn; and
- Australia, while not immune, has been spared the worst excesses of the global financial crisis because of good regulation. This places Australia in an advantageous position.

If you have any questions, please do not hesitate to contact myself at 02 9234 7085 or Allan Hansell at 02 9234 7698.

Yours sincerely



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