



Professional and education standards

FPA RESPONSE TO PJC QUESTIONS | 14 OCTOBER 2014

Questions on Notice – due 3/11/2014 to the PJC committee

1. A list of associations/groups that are 'lobby groups' and a list of associations that the FPA define as 'professional bodies'

The FPA defines the following organisations as financial services professional bodies. These professional bodies have the public interest at their core, only allow individuals as members and hold members accountable to their professional obligations. They also have developed professional standards for advice providers:

- CPA Australia,
- Self-Managed Super Fund Professionals Association of Australia (SPAA)
- Institute of Chartered Accountants Australia (ICAA)
- The Institute of Public Accountants (IPA)
- Financial Planning Association (FPA)

The FPA considers the following organisations to be lobby groups for members of the financial services industry:

- The Tax Institute (TIA)
- Financial Services Council (FSC)
- Association of Financial Advisers (AFA)
- Association of Superannuation Funds Australia (ASFA)
- Finsia
- National Insurance Brokers Association (NIBA)
- Insurance Council of Australia (ICA)
- Australian Financial Markets Association (AFMA)
- Industry Super Australia (ISA)
- Australian Institute of Superannuation Trustees (AIST)
- Boutique Financial Planning group (BFP)
- Australian Bankers' Association (ABA)
- Customer Owned Banking Association (COBA)
- Mortgage and Finance Association of Australia (MFAA)
- National Tax Agents Association (NTAA)

We have not included the Association of Independently Owned Financial Planners (AIOFP) in this list as it appears to be a commercial operation with it's own research and product distribution function despite the association name.



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2. Statistics from ASIC enforcement activity on financial advisers vs FPA members

The following table identifies individuals who were permanently or temporarily banned by ASIC in a given financial year and who held current FPA membership at the date of the ASIC banning (as at 30 June 2014).

As this table shows, CFP professionals only represent 7% of ASIC bannings even though they represent 30% (there are 5,500 CFPs) of the estimated 18,250 financial planners in Australia. This proves that higher education, ethics and practice standards does reduce the incidence of poor advice.

Financial Year	ASIC financial adviser bans	FPA Members	Percentage FPA Members	CFPs	Percentage CFPs
2009/10	22	0	0%	0	0%
2010/11	22	3	14%	3	14%
2011/12	19	3	16%	2	11%
2012/13	13	3	23%	1	8%
2013/14	14	1	7%	0	0%
TOTAL	90	10	11%	6	7%

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Questions from Senator O'Neil

1. To better understand what is happening in the different business models including the operation of tier 1 v tier 2 advice

There are several business models that have been structured to deal with the provision of financial advice and the distribution of financial products, including providing factual information, direct sales, general advice, scaled financial advice, comprehensive financial planning, and intra-fund advice. Some of these models are driven by the sale of financial products, whereas others are driven by the provision of financial advice services. Many of the distinctions between business models are driven by the nature of the law.

Financial product advice

The definition of financial product advice is located in subsection 766B(1) of the Corporations Act:

(1) For the purposes of this Chapter, **financial product advice** means a recommendation or a statement of opinion, or a report of either of those things, that:

- (a) is intended to influence a person or persons in making a decision in relation to a particular financial product or class of financial products, or an interest in a particular financial product or class of financial products; or
- (b) could reasonably be regarded as being intended to have such an influence.

There are providers who rely on providing factual information to consumers without intending to influence the decisions of consumers, and who could not reasonably be regarded as having that influence. These services provide factual information which is not considered financial product advice and is therefore not regulated by the Australian Financial Services licensing scheme.

Financial product advice is divided into two forms, as per subsections 766B(2)-(4) of the Corporations Act:

(2) There are 2 types of financial product advice: personal advice and general advice.

(3) For the purposes of this Chapter, **personal advice** is financial product advice that is given or directed to a person (including by electronic means) in circumstances where:

- (a) the provider of the advice has considered one or more of the person's objectives, financial situation and needs (otherwise than for the purposes of compliance with the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* or with regulations, or AML/CTF Rules, under that Act); or
- (b) a reasonable person might expect the provider to have considered one or more of those matters.

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(4) For the purposes of this Chapter, **general advice** is financial product advice that is not personal advice.

When a professional financial planner provides financial advice regarding a financial product to a retail client, they are providing personal advice. Intra-fund advisers can also give personal advice to members of a superannuation fund, but only regarding specific superannuation-related topics and are remunerated by the members of that fund through a shared adviser fee.

Scaled advice operates within the same legal framework as comprehensive financial planning, but the client and adviser agree on the areas which will be included and excluded from the advice. This will affect both the recommendations made by the adviser and the circumstances of the client which will form part of the adviser's 'fact find' on the client.

The direct sales business model relies on the definition of general advice in the Act. This definition is very broad, as it encompasses every interaction regarding financial advice that a) includes a recommendation or a statement of opinion that is intended to influence a consumer's decision, or could reasonably be regarded as being intended to have that effect, and b) does not make that recommendation or opinion on the basis of the individual consumer's objectives, financial situation, and needs.

Product tiers

The various business models involved in financial products and financial advice are also characterised by the two-tier categorisation of financial products in the Corporations Act. 'Tier 1' products are every financial product that is not a 'Tier 2' product. While there is no specific statutory definition of either Tier 1 or Tier 2, ASIC's Regulatory Guide 146 notes the following financial products in Tier 2:

- General insurance products, except for personal sickness and accident (Corporations Regulations 7.1.14);
- Consumer credit insurance (Corporations Regulations 7.1.15);
- Basic deposit products;
- Non-cash payment products;
- FHSA deposit accounts

Tier 1 products are considered more complicated than 'Tier 2' products, and require higher competency standards to advise on. Advice on Tier 1 products is also more stringently regulated than Tier 2 products. The business models which cater specifically to the market for Tier 2 products (e.g. bank branches) are fundamentally different to those who offer more complicated Tier 1 products.

The practical provision of tier 1 and tier 2 advice

General advice on Tier 2 products, such as that provided by bank tellers for example, tends to be more of a sales pitch about a product with the intention of influencing a consumer's decision, or to trigger the consumer to believe there is a need for a financial product or for personal advice provided by in-house advisers. The aim is to provide product information and influence consumers in product purchases, not to provide advice. Some institutions also 'flag' certain customers (who have purchased



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a financial product) for advisers to proactively follow-up on based on the products customers may have taken out.

Front line staff of product-aligned organisations commonly uses general advice on tier 2 products to refer consumers on to internal financial advisers for personal advice, and receive a referral bonus based on set referral targets. The general advice license and process is used to market and promote financial products. It is ultimately used for the sale of products.

This demonstrates the nature of how some organisations leverage the financial advice legislation. The intention is to sell products, not provide advice as the term implies.

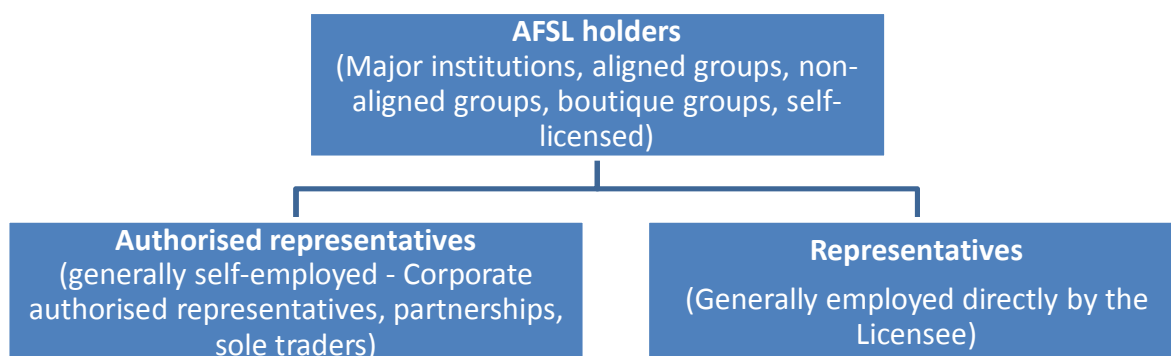
This is why truth in labelling is so vital for consumer protection. There is a need for greater transparency in what and why information is being provided to each consumer. Advice must actually be 'advice' and be in the consumer's best interest. Anything else must be provided and labelled as product information provided by sales representatives.

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2. Information explaining the different licensing structures used by banks, independents, industry funds, credit unions etc...

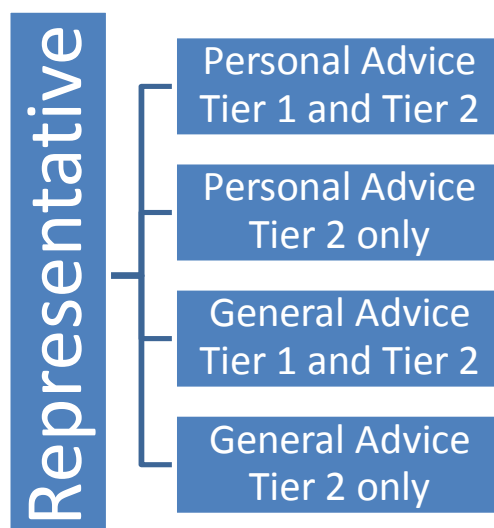
The general regulatory structure for financial planning practices has formed in response to the requirements of the Corporations Act, and tends to follow this form;



The banks, as well as larger groups such as AMP and IOOF, tend to use a combination of employed representatives through their main brand, as well as subsidiary corporate authorised representatives which operate either on the parent company's AFS license or hold their own license.

Other financial planning practices adopt greater or lesser degrees of independence from their licensees. Some choose to be self-licensed.

Industry funds and credit unions tend to employ representatives. Below is an example of the different levels in which employed advisers within the institutions operate:



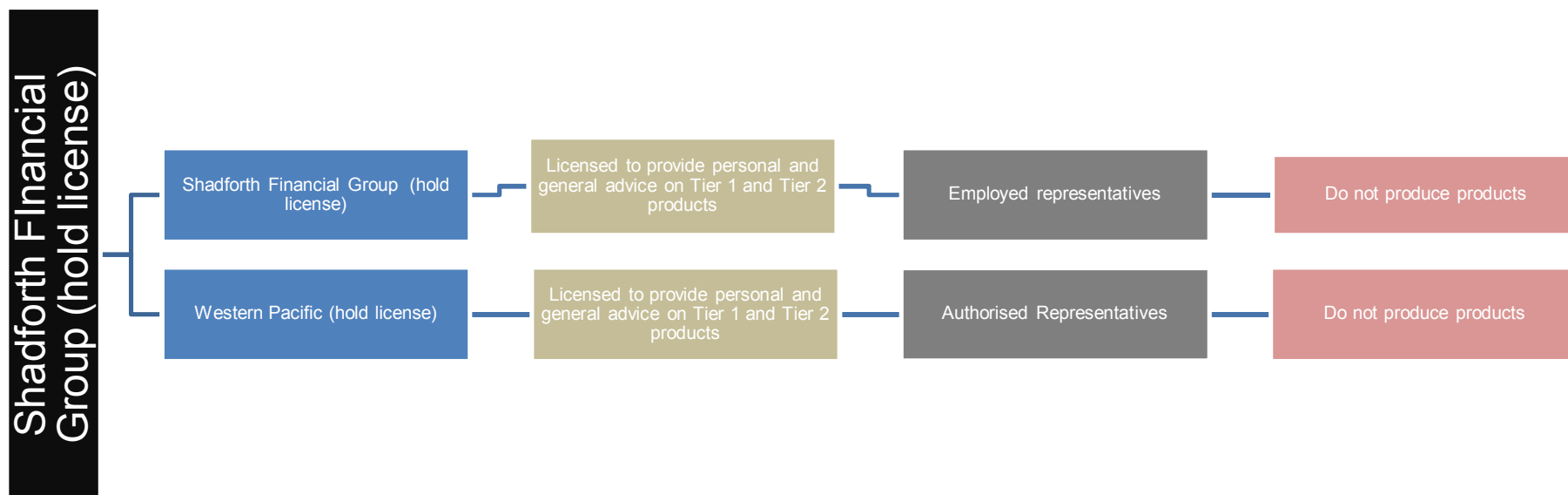
FPA response to Questions on Notice – Business Models

Examples of different business models

Some large dealer groups hold multiple licenses – one for the parent company and one for each branded subsidiary company within the group. Often the authorisation on each license may differ to limit the type of advice provided by each entity and minimised business risks. The group derives income from cross-selling of products across the business.

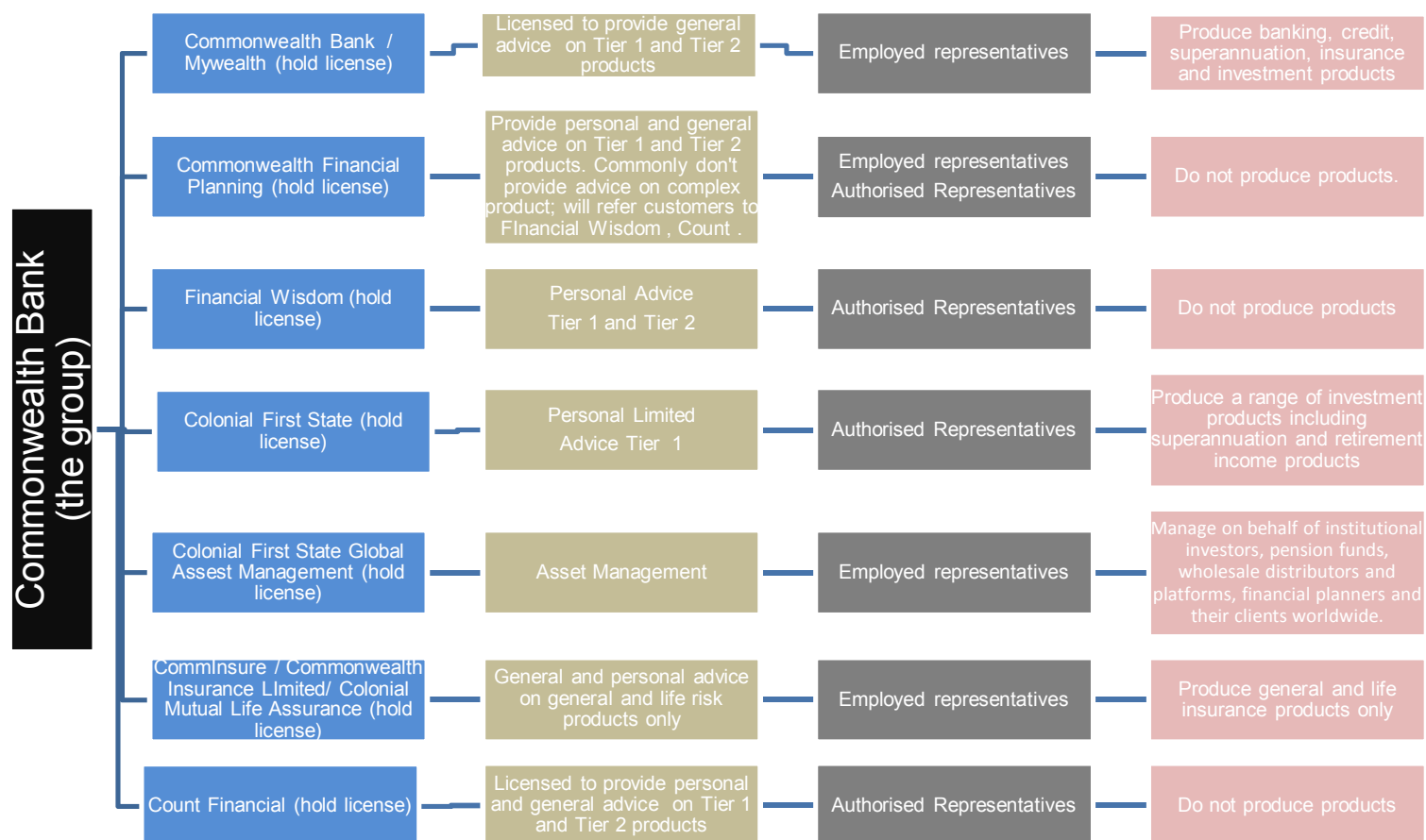
The FPA provides the following high level structures of some well known advice providers as examples of different business models.

Non-aligned model



FPA response to Questions on Notice – Business Models

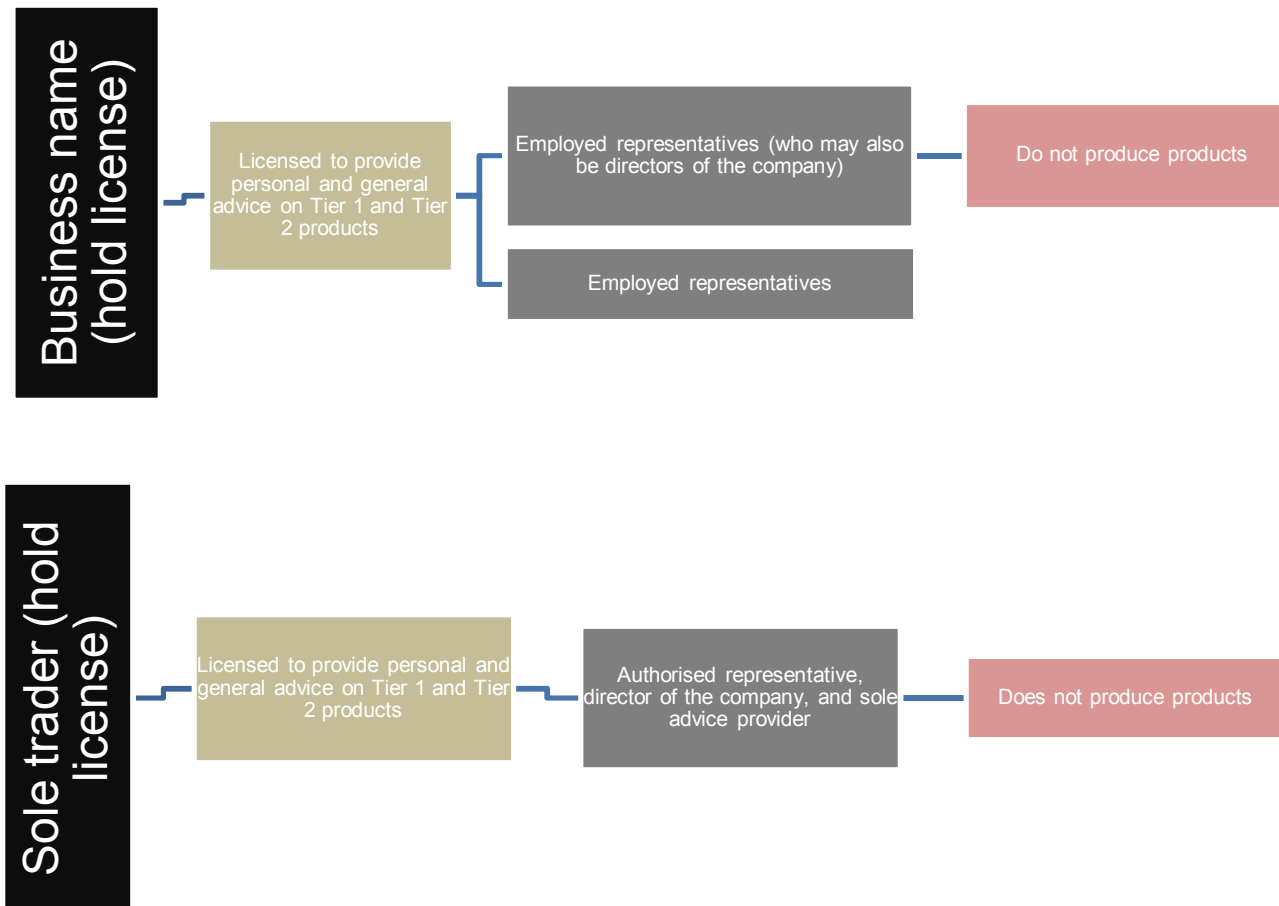
Product aligned model



Commonwealth Financial Planning Limited ABN 65 003 900 169 AFSL 231139, Commonwealth Private ABN 48 123 123 124 AFSL 234945, Financial Wisdom Limited ABN 70 006 646 108 AFSL 231138 and Count Financial Limited ABN 19 001 974 625 AFSL 227232 are wholly-owned, non-guaranteed subsidiaries of the Commonwealth Bank of Australia ABN 48 123 123 124. BW Financial Advice Limited ABN 97 097 084 878 AFSL 230727.

FPA response to Questions on Notice – Business Models

Boutique licensee model



FPA response to Questions on Notice – Business Models

Superannuation funds

Superannuation fund trustees are exempt from many of the financial product advice obligations under the Corporations Act when providing general advice and intra-fund advice on their own products. However, they must hold an AFSL to provide advice outside their own products. Superannuation funds that provide advice under a full AFSL, generally operate as per a bank model.

Credit unions

Credit unions hold their own AFSL and generally operate under similar models to the banks. However, credit unions commonly use 'white label products', rebadging financial products produced by other organisations with their own brand, such as superannuation for example.