



**Confidential
Submission to:**

**Corporate and Financial Services Regulation Review
Corporations and Financial Services Division
The Treasury
Langton Crescent
PARKES ACT 2600
Fax: 02 6263 2770
CFScomments@treasury.gov.au**

**Corporate and Financial Services
Regulation Review
Consultation Paper
April 2006**

Prepared By: Association of Financial Advisers Ltd.

Introduction

The Association of Financial Advisers Ltd has considered at length the issues raised by the Parliamentary Secretary to the Treasurer, The Hon Chris Pearce MP in the April 2006 consultation paper.

Our response, as an Association of advisers, is centered on two fundamental principles, these being:

- **Simplification reduces costs for clients.**
- **What would be best practice?**

With these two principles in mind, our comments and notes follow the order of the consultation paper.

There are some aspects of the proposed regulation changes that will not impact the Association, and as such no comment has been made regarding these issues.

The Association of Financial Advisers is an Association predominantly composed by practitioners.

The submission that we make is entirely driven from the experience of practitioners currently holding authorised representative licenses or Licensee's in their own right.

1. FINANCIAL SERVICES REGULATION

1.1 REPETITION OF INFORMATION IN A STATEMENT OF ADVICE

AFA Response:

The provision of a statement of advice to a client provides advice either on a holistic basis for a comprehensive SOA or for a specific need SOA. If there are any material changes to the client's situation then this needs to be disclosed. However if there are no material changes then the subsequent statement of advice does not require repetition, only a reference on the front page to the prior advice. No other conditions are necessary.

1.2 SITUATIONS WHERE A STATEMENT OF ADVICE DOES NOT HAVE TO BE PREPARED

AFA Response:

Yes this is entirely appropriate as there is no transaction. It is usual that an adviser would complete as necessary a file note. This would be considered best practice.

1.3 ISSUE OF DISCLOSURE DOCUMENTS WHEN PRODUCT OR ADVICE IS REJECTED

AFA Response:

The AFA disagrees with your conclusion as being impracticable. If a client rejects advice the advice (SOA) has already been provided as has the FSG. If the consumer seeks advice and then rejects that advice then it should be a requirement that such a rejection of advice is documented and signed by the client.

The **best practice approach** would be where client circumstances change and the original intention of the client changes with those circumstances, such a change in need would be provided via a file note and the formal advising the SOA clearly amended as void and signed by the client.

If such practice is not mandated then longer term issues of clients trying to litigate against advisers will become more commonplace, unless documentary evidence of the formal rejection is on the file.

1.4 PROVISION OF FINANCIAL SERVICES GUIDE BY THIRD PARTY CUSTODIAN OR ADMINISTRATOR

AFA Response:

All product & service providers should provide an FSG to consumers. This is to inform consumers & to ensure service & product providers, e.g. Custodians and fund administrators are meeting their disclosure requirements.

1.5 COMBINING A FINANCIAL SERVICES GUIDE AND PROSPECTUS

AFA response:

The current system whereby disclosure documents are separated works well to serve & inform the consumer. Combining these documents would only serve to create more change and complexity for the consumer.

1.6 UPDATING FINANCIAL SERVICES GUIDES

AFA Response:

This is a practical enhancement and **represents best practice** and a constructive step forward.

1.7 STANDARDISED FINANCIAL SERVICES GUIDE

AFA Response:

The Association disagrees with this proposed change as it lessens the consumer protection for the Bank customer. The Financial Services Guide (FSG) process at present ensures that the Community Bank service deliverer has to have completed appropriate training and this in turn is reflected in the individual bank officer.

This is a primary method that Treasury has of ensuring uniform adherence to the training mandated for financial services advice delivery. We recommend that the regulation allow for standardised FSGs with an individualised inserted page for each person delivering the service and that this should apply to company owned branches as well.

This is a simple but effective compliance method that protects the financial services licence holder as well as the consumer, and stops unauthorised advice.

1.8 SMALL BUSINESS TEST

AFA Response:

No. The view of our practitioners is that small business is well defined as having 10 or less employees regardless of turnover. A practical example would be that one small financial services business could concentrate on an area of the market where it has high turnover and small margins whereas another could have smaller turnover and much greater margins.

Assets are a function of the balance sheet with some businesses capitalising working assets whilst others are happy to lease.

We suggest this is a minefield. AFA recommends that it needs no present attention and should be left as is. There is no outcome that will enhance any financial services regulation outcome in this proposal.

1.9 TREATMENT OF SUPERANNUATION TRUSTEES

AFA Response:

The focus of the Trustee should be the member and serving and protecting their rights. The trustee must meet both APRA's & ASIC's requirements.

1.10 TREATMENT OF EMPLOYERS

AFA Response:

This proposal has certain flaws in that it attempts to disguise a change from retail to wholesale the funds operated or accessed via large employers. This measure is against the interests of the fund members who are employed by these large businesses. The proposal would cut across the legislated intention of the Government with choice of funds, where members and potential members would be unable to receive appropriate member information.

1.11 'BUNDLED' GENERAL INSURANCE PRODUCTS

AFA Response:

We agree that this measure will drive savings to the end user and as the contracts are annually renewable, will not reduce consumer choice whether that consumer is considered wholesale or retail.

1.12 'BADGING' OF DISCLOSURE DOCUMENTS

AFA Response:

Normal disclosure rules should apply. Consumers need to be aware of the relationship between the adviser and the manufacturer. This needs to be clearly identified in all disclosure documents.

1.13 JURISDICTIONAL REACH

1.13.1 Australian financial services licence holders acting on behalf of others.

AFA Response:

We disagree with this proposal as it reduces the protection of consumers. If the dealing is within the Australian market then local laws apply and there should be no licensing exemptions. This proposal weakens the protection of the law in regard to the provision of services.

1.13.2 Offshore branches

AFA Response:

The regulations governing AFSL holders must comply in the jurisdiction in which their services and products are offered. In addition offshore branches of local AFSL holders need to comply with both the Australian requirements as well as the local environment.

1.14 DOLLAR DISCLOSURE FOR GENERAL INSURANCE

Consultation Issue

AFA response:

Yes - we fully agree and support this as it is best practice and has a strong consumer outcome.

1.15 INCORPORATION BY REFERENCE IN DISCLOSURE DOCUMENTS

AFA Response:

Incorporating information by reference will not add to better consumer outcomes. Disclosure needs to be "Clear, Concise and Effective ". This will make it more difficult for consumers.

All information must be explained to the client in terms able to be understood by clients in plain and simple English.

1.16 EXEMPTION FROM FSR RETAIL CLIENT OBLIGATIONS FOR SECONDARY SERVICE PROVIDERS

AFA Response:

Obligations to clients are obligations that cannot be transferred. It is not necessary to change the current environment. This proposal may create a market for financial services providers who specialise in one product and who will try to market this to consumers. Consumer protection will be stressed and will be at the "cost" of the consumer.

This is a measure that will probably create a future problem for the regulator, the consumer and the industry.

1.17 CHANGES TO THE SCOPE OF GENERAL ADVICE

AFA Response:

The association supports this measure and advises that it considers as best practice that general advice such as "superannuation is a valid strategy for retirement funding" to fall within such a scope.

The issue of personal advice is more complex and has become loaded with more responsibility, including Family Law issues, child maintenance support, and general product related taxation advice. All of these topics can include both personal and general advice prior to a formal advising.

We would recommend that a simple test be built into the regulation that says "If the general advice or personal advice leads to a formal statement of advice then appropriate file notes should be kept to ensure linkage to the client motivation and their needs and goals".

1.18 EXEMPTION FROM THE REQUIREMENT TO PROVIDE A FINANCIAL SERVICES GUIDE

AFA Response:

The AFA opposes this measure as it reduces consumer information and takes away the opportunity for choice of advice provision. Disclosure must be made to seminar attendees by way of an introduction at the start of the presentation and by supplying kits with FSGs for attendees.

The only check and balance is the provision of an FSG and this should remain.

1.19 THRESHOLD REQUIREMENTS FOR STATEMENTS OF ADVICE

AFA Response:

We agree with the logic of this proposed change and recommend the following thresholds per product:

Superannuation for employees or self employed aged 25 yrs or less and having accumulated less than \$5,000 in member benefit.

Life Insurance contracts where the annual premium is less than \$600.

Managed Investments where the investor has less than \$10,000 to be invested and where no upfront entry fee is charged at all.

1.20 ORAL DISCLOSURE

AFA Response:

This measure is another reduction of consumer protection. It is fundamental to the provision of advice that the client is fully aware of the provisions of the Financial Services Guide and that this guide is explained carefully to the client. The obligation of the adviser to ensure the client is fully aware of the provisions of the FSG is 'a brick in the wall' of the AFSL system and should not be lessened.

In regard to SOAs with products that have cooling off periods it would be appropriate to ensure the advice is provided at the mid term of the cooling off period to give effect to the fundamental reason that the law was written.

1.21 SICKNESS AND ACCIDENT INSURANCE

AFA response:

We agree with this conclusion as it adds to access to benefits for clients.

1.22 SOPHISTICATED INVESTORS

AFA response:

In a free market the consumer has choice. If a sophisticated investor wishes to become a wholesale client and deal direct with product suppliers then they have the ability to apply for and be granted a limited AFSL. This would protect product suppliers and generate additional revenue for the ASIC.

1.23 AUTHORISED REPRESENTATIVES

AFA Response:

We support cross endorsement and have done so for many years and are happy that this measure will enable a higher level of objective advice to be provided to clients by advisers.

1.24 GROUP LICENSING UNDER FSR

AFA Response:

The association has observed the development of AFS licensing over the past number of years. It is not surprised at the little take up of group licensing.

Every dealer group is different and set up with varying structures.

No change is needed on the grounds that the very large differentiation of dealer group structures is one of the primary guardians of the effective outcomes that the Corporations Act has delivered, i.e. increased competition.

1.25 OVERLAP OF REQUIREMENTS IN THE CORPORATIONS ACT AND ASX MARKET RULES

No response by the AFA

1.26 POLICY STATEMENT 146 — TRAINING REQUIREMENTS

AFA Response:

The Association supports PS 146 as the foundation of learning for entry into the industry. Specialised and differentiated training programs should be available based on areas of specialisation e.g. Retirement planning, Business insurance etc. Strong consumer and industry outcomes are based on improved learning and education requirements.

1.27 REGISTER OF SANCTIONED FINANCIAL SERVICE PROVIDERS

AFA Response:

We fully support the immediate establishment of such a register and ask that the present register controlled by the ASIC be expanded and that mandatory provision of a clearance certificate by each Authorised Representative be included by regulation, with such a certificate being provided by the ASIC.

7. COLLECTIVE INVESTMENTS

7.1 PRODUCT RATIONALISATION

AFA Response:

The AFA is aware that there is a significant body of legacy products as they are known in the Financial Services Industry presently of concern.

Our view however is tempered by the fact that older product such as Insurance Bonds, Endowment Insurance and especially Whole of Life insurance have significant customer advantages. Clients who now have developed health issues, that would prevent them being underwritten for newer policies would be severely disadvantaged by any simplified mechanism to convert to newer product.

Equally there are a large range of older superannuation products that have large exit fees still charged against the policy even though annual fees and charges since the policy inception should have more than repaid set up and commission costs.

The only simple way to gain certain conversion is to remove all exit fees on superannuation policies pre 1992 – the start of SGC, and to offer conversion of older superannuation policies that do not participate in bonus schemes under the number 1 fund of life insurers, offering to plan an owner's conversion at no charge.

This would remove the bulk of the policies that are causing the administrative impediment and it is our recommended course of action as it will provide choice to clients.

7.2 INVESTOR DIRECTED PORTFOLIO SERVICES

AFA Response:

The association agrees with this recommendation.

8. DEALING WITH REGULATORS

8.3 ENHANCING COMMUNICATION WITH ASIC

AFA Response:

The AFA believes that the direction now set by the ASIC to move from an enforcement driven agency, to a compliance and education driven organisation, is beginning to work. Whilst there will always be a need for compliance, this need not be the sole mission of ASIC.

It is our recommendation that a Financial Services Advisory Council be set up to provide a formal interface between the largest industry in Australia and the

regulator. It is recommended that the advisory council be drawn equally from all industry representative groups to ensure balance and non domination by any one opinion. It is further recommended that the Council be formally funded by the Government and that it have representation from the Department of the Treasury. It is recommended that the Council report operationally and quarterly to the Parliamentary Secretary to the Treasurer, with a formal report to the Parliamentary Secretary each year on the Health of the Financial Services Industry.

It is further recommended that this Council be chaired by a Senior Treasury Officer.

8.5 PRODUCT DISCLOSURE STATEMENT IN-USE NOTICES

AFA Response:

The AFA has concerns that ASIC actually uses this compliance tool effectively.

We recommend as follows a series of improvements;

1. That the "In use" notification be provided to the ASIC 14 days before the first provision of the PDS to the client.
2. That the PDS review function be contracted formally to a Financial Services Auditing specialist, to provide rapid feedback on whether the PDS and accompanying data meet the specific requirements regarding appropriate investment criteria. Such an audit statement shall accompany every PDS submitted for approval. The PDFS will not be approved unless this statement is provided. This will reduce the staffing diverted to this task by ASIC, place the onus on product manufacturers to get it right first time, and allow more rigorous examination of PDS documentation prior to submission by the proponent.
3. That ASIC is informed 14 days prior to the date of expiry or 14 days from the date of product withdrawal in order to determine that the full requirements of advertising the termination have been met.
4. That a full electronic copy of each PDS is provided to ASIC with a view that all PDSs licensed for distribution and sale will eventually be on a segment of the ASIC website. The product manufacturer will meet the cost of this, by paying an annual public access fee on a page basis for each PDS that they issue.