



A S I C

Australian Securities & Investments Commission

The new FSR disclosure regime – likely impacts on our industry

Presentation by Ian Johnston, ASIC's Executive Director, Financial Services Regulation, to the Financial Planning Association Principal Members and CFP Conference, Gold Coast, 10 May 2002

Slide 1 Introduction

Good afternoon: It's my pleasure to be speaking with you today on what I hope are a number of both interesting and topical subjects. Now that the Financial Services Reform Act is underway, I propose to revisit the regulatory rationale behind it and address some of its specifics that have relevance to your industry. I also want to use this opportunity to deliver messages regarding our expectations, and aspirations, of industry.

In the latter part of this presentation, I will touch on a number of ASIC initiatives: projects that we are undertaking with a view to improving industry practices.

Let's start by revisiting how FSRA came about. In 1996 the Australian Government established an Inquiry into the Australian Financial System to review the significant changes to the regulatory framework since the Campbell Committee Inquiry in 1981. The "Wallis" Inquiry, as it became known, was to review these developments, consider the factors likely to drive further change, and to make recommendations for possible further improvements to the regulatory arrangements¹.

¹ FSI Report Overview, page vii

Slide 2 Wallis

The Treasurer provided the following mission statement:

“The Inquiry is charged with providing a stocktake of the results arising from the financial deregulation of the Australian financial system since the early 1980s. The forces driving further change will be analysed, in particular, technological development. Recommendations will be made on the nature of the regulatory arrangements that will best ensure an efficient, responsive, competitive and flexible financial system to underpin stronger economic performance, consistent with financial stability, prudence, integrity and fairness.”²

This era of accelerated change experienced since the early '80s stemmed from rapid technological innovation and an evolving business environment together with longer-term changes in customer needs and profiles, which are gradual, but powerful influences on financial sector developments. We are progressively seeing a greater array of industry participants, products, distribution channels, competition emerging from new providers of financial services and increasing globalisation of financial markets.³

Slide 3 Recommendations

The Wallis Committee reported in March 1997, and some of the key recommendations, for our purposes today, included:

- Corporations Law, market integrity and consumer protection should be combined in a single agency. This resulted in the establishment of the Australian Securities and Investments Commission (ASIC) in 1998, which combined the roles of the old ASC, Insurance and Superannuation Commission and Australian payments system council. Amongst other responsibilities the new ASIC was to be responsible for the administration of all consumer protection laws for financial services.
- Disclosure requirements should be consistent and comparable
- Profile statements should be introduced for more effective disclosure, including about offers of retail financial products.

² FSI Report Overview, page vii

³ FSI Report Overview, page 3

- A single licensing regime should be introduced for financial sales advice and dealing
- A single set of requirements should be introduced for financial sales and advice which include:
 - Minimum standards of competency and ethical behaviour
 - Requirements for the disclosure of fees and adviser's capacity
 - Rules on handling client property and money, and
 - Financial resources or insurance available in cases of fraud or incompetence;

Slide 4 Recommendations (cont)

- Responsibilities for agents and employees.
- Regulation of collective investments and public offer superannuation should be harmonised
- (ASIC) should have broad enforcement powers and
- Regulatory agencies should have operational autonomy.

The Inquiry recommended that the framework based on four institutional regulators be replaced by three agencies established on functional lines: the RBA, APRA, with responsibility for financial safety and prudential regulation generally and of course ASIC, with responsibility for market integrity, consumer protection and corporations.

ASIC's role concerns the relationship between institutions and individual consumers. ASIC aims to look after consumers ensuring they receive proper disclosure, are dealt with fairly by qualified people, continue to receive useful information about their investment or product and can access proper complaints-handling procedures. Our statutory mandate of corporate regulation includes regulating the conduct of directors and other office bearers, reviewing disclosure to the market through annual reports and regulating other company activities such as insolvent trading. ASIC also regulates conduct, disclosure, complaints handling and other consumer protection issues arising from the provision of financial product advice.

You may be wondering why I have taken time this morning to revisit Wallis – it is because the original ethos behind Wallis and indeed the drivers behind the FSRA sometimes get forgotten amid industry cries that compliance is burdensome and in some cases obstructive.

ASIC regulates the financial sector under governance by Commonwealth Treasury. For those of you that have been in the industry for sometime, it may be apparent that the regulatory emphasis has moved away from black letter enforcement to setting high industry standards and leaving it to industry to comply with the legislative requirements. Occasionally this process goes awry – a recent example is Solicitors Mortgages - and ASIC must step in with greater regulatory impact in these cases.

It goes without saying that we need a well-resourced regulator to be able to approach the job in a way that focuses on industry self-compliance: but if things go increasingly wrong in the regulatory neighbourhood there is a very real likelihood that the Government will resort again to increased regulation.

Slide 5 Regulatory pyramid

How we approach our regulatory responsibilities can be illustrated by the use of a regulatory pyramid, which is on the screen now.

This pyramid illustrates how we categorise people who we regulate. This is not just appropriate to ASIC: it is generic and can be used by any regulatory body – police force, customs etc.

- Compliant – educate
- Opportunists – surveillance
- Crooks - enforce

In response to our regulatory mandate, as a securities and consumer protection regulator ASIC adopts a high level of transparency in its dealings with the regulated population. We believe this transparency is essential to educate consumers and send messages to the industry. In contrast, a prudential regulator focuses on the overall viability of these financial institutions and perhaps understandably approaches regulation in a different way.

For any of you that have dealings with a prudential regulator, these differences may have been quite noticeable.

There are obviously overlaps between those issues relevant to examining the financial safety of an institution and those involved in promoting consumer protection and market integrity. The dividing lines are not always absolutely clear cut: APRA and ASIC, must work together to ensure there are no regulatory gaps or overlaps, whilst fulfilling individual regulatory responsibilities as anticipated by the Wallis recommendations.

From a global perspective: we are leading edge in implementing a twin-peaks regulatory regime and many countries are watching with interest to see whether this regime delivers what is expected of it. Likewise, FSRA is a first and many of our fellow regulators are viewing this process and legislation as a favourable precedent. This places a responsibility on ASIC to be leading edge in regulation across all sectors: which of course includes the insurance industry.

Most of our regulated population, and the consumers we are working to protect, want effective, responsive and consultative regulation that maintains Australia's relevance in a global market and manages public expectations. We know that you will be watching our performance on financial services reform closely, particularly as to how we deliver on our longstanding commitment to honest and competent advice and disclosure.

Industry has identified superannuation as a special area of risk for consumers: we are working to become more active and more skilled in superannuation and insurance, where consumers are expected to make decisions despite poor understanding of the system and levels of accountability by trustees that are less than optimal. We are working to raise standards through policy, surveillance, industry campaigns and targeted enforcement, based on data analysis and likely risks, and to maintain public confidence by improving sales and disclosure practices in the industry. We also have participated on the Government's Superannuation Working Group, which was comprised to discuss and make recommendations as to the future of superannuation regulation.

Consumers are more actively participating in the financial services marketplace. Funds are flowing very strongly into superannuation, and member choice of fund may still be

introduced. Retail participation in investment markets remains high although lacking depth and diversification. Consumers are exercising their rights and expect high and possibly unrealistic standards of protection, especially in superannuation. In this regard, we are working to help consumers make more informed decisions.

What all this is really saying is that, in order to regulate effectively, we need to keep across industry issues and be in a position to appreciate and respond to industry concerns. In recognition of this ingredient for good regulation, we adopted a consultative approach to implement FSRA. We consulted heavily with various financial services industries, including your industry, as to the practicality of the policy proposals.

Our regulatory approach is sometimes criticised by industry as being too tough, or too impractical. The example that comes to mind is our Policy Statement 146. Wallis said that we needed competency requirements: FSRA enacts these but it up to ASIC to set the standards. We then were faced with three options: we could implement no standards, wherein you would have had an industry rife with rogue operators, probably bringing disrepute to the industry that you have worked hard in to build credibility and professionalism. We could have required Authorised Representatives to sit exams every two years, imposing burdensome obstacles on your industry: or we could craft the training requirements around the existing requirements. We chose the last option as the most pragmatic and reasonable option to maintain a standard of competency and ensure consumers were offered a level of protection.

To this end, I compliment the FPA on its approach to training and maintaining high competency standards: in fact, it would be nice to see those advisors, that don't follow the approach adopted by your Association, change their ways and meet the higher standards, to offer consistency to consumers across dealings with the large percentage of advisors.

One final note on Wallis: It may interest you to know that the Financial Services Advisory Committee (FSAC) is soon to report on whether the Wallis recommendations are achieving what they set out to achieve: we are awaiting with interest the outcomes of this report.

You will be aware that FSRA is the final stage of Wallis reform implementation, and I would hope that you are more than aware that this legislation commenced a month ago, on 11 March 2002.

Slide 6 FSRA (general)

The Financial Services Reform legislation includes the Financial Services Reform Act, the Financial Services Reform (Consequential Provisions) Act, and regulations. All must be read together to get the complete picture. The legislation is supplemented by ASIC Policy and Guidance as to how it proposes to administer the law. The provisions of the FSRA are drafted to be flexible, bearing in mind its key objectives, and much of the detail is covered in the regulations.

The Act affects the general insurance, life insurance, superannuation, and deposit taking industries as well as investment advisors, dealers, responsible entities and market makers.

In essence, the FSRA provides a single regulatory regime for financial products and services, financial markets and clearing and settlement facilities.

Slide 7 FSRA objectives

The main objectives of the FSRA are to promote firstly, confident and informed decision making by consumers of financial products and services while facilitating efficiency, flexibility and innovation in the provision of those products and services. It is also intended to promote fairness, honesty and professionalism by those who provide financial services and create a fair, orderly and transparent market for financial products. The final objective is to reduce systemic risk and provide fair and effective services by clearing and settlement facilities.

Slide 8 FSRA outcomes

And these objectives drive the following outcomes: Firstly, harmonisation of regulation of all financial products including managed investments, superannuation, general and life insurance, securities, futures and derivatives, foreign exchange and deposit accounts;

Secondly, provision of a single licensing framework for financial sales, advice and dealings for financial services and uniform licenses for the authorisation of market operators and clearing and settlement facilities. This means three new types of licence will be created by the FSRA:

- One (the most common), an Australian financial services licence (AFSL)
- Two, an Australian clearing and settlement facility licence, and thirdly;
- an Australian financial markets licence.

The final outcome is the provision of a consistent and comparable disclosure regime across all financial products.

FSRA replaces Chapters 7 and 8 of the Corporations Law and changes will be made to the ASIC Act and current legislation governing the superannuation industry and retirement savings accounts, amongst others. The Act does not replace Chapter 5C of the Corporations Act, regulating managed investments.

Slide 9 FSRA licensing

FSRA will affect your company if it provides a financial service: this means that most, if not all of you will need an Australian Financial Services Licence.

Providing a "financial service" includes being engaged in one of the following five activities:

1. giving advice on financial products
2. dealing in financial products
3. operating a registered managed investment scheme
4. making a market in financial products
5. operating a custodial or depository service, or

engage in conduct prescribed by regulations.

The first step is therefore for a person to decide whether or not the products that a person is providing a financial service in relation to, are caught by the legislation. The majority of financial products are caught, including Life, General, Securities, Futures, Superannuation

and Managed Investments products, however the Act lists a number of specific inclusions and exclusions, and exempts certain persons from having to hold a licence.

Slide 10 Policy and key legislative obligations

In each individual case, you will need to read the law to see how it applies to you. If you are captured, the FSRA imposes general obligations on all licensees:

- Act efficiently, honestly & fairly
- Comply with licence conditions: Remember that there are licence conditions both in regulations and the ASIC licence, and that the licence will not reflect the conditions in the regulations
- Comply with financial services laws: "financial services laws" is a wide concept
- Ensure your representatives comply with financial services laws. Compliance applies to actions of licensee and on behalf of the licensee
- Unless APRA regulated – have adequate financial, human, IT resources
- Maintain competency to provide the services
- Ensure your representatives are adequately trained and competent
- Where your services are to retail clients – have a complying dispute resolution system
- Unless APRA regulated – have adequate risk management systems
- Have satisfactory compensation arrangements

Slide 11 Policy and ASIC's role

It is important to remind you here, that ASIC does not draft the legislation – this is Treasury's role. It is, however, ASIC's role to implement the legislation: we are conscious of the changing nature of the Australian financial sector, and in particular the extent to which globalisation and increased cross-border activity by product issuers and service providers has an impact on our markets. It is not realistic to expect that legislation can be drafted in a way that will be capable of incorporating this change. Regulatory flexibility will inevitably be needed to provide clarity and certainty, to prevent unintended consequences, and to promote the objectives of the law.

The challenge for the regulator in the exercise of its discretion is to implement the legislation by ensuring that there is sufficient certainty for market participants as to how the proposed changes will be implemented and/or enforced, whilst maintaining sufficient flexibility to facilitate innovation and promote business. In meeting this challenge with FSRA, we have developed policy and guidance to assist industry with applying the legislative provisions to their individual circumstances.

This policy has been developed in consultation with industry members and industry bodies. The end result of this process has been a number of FSR specific policy statements and guides, issued over the last six months or so, covering all manner of subjects including Disclosure Principles, Licensee Requirements, Advice and Dealing, Dispute Resolution and our use of discretionary powers. All of these publications are available on our website (www.asic.gov.au) and through commercial publications, and I therefore only propose to remind you of the disclosure and organisational competencies that must be met under FSRA.

Slide 12 Organisational capacities

Our Organisational Capacities Policy Statement (PS164) helps you understand our approach to the licensee obligations I noted previously, and sets our minimum expectations on capacity. The intention is to help you develop measures; help applicants understand what we look for in an application and to help licensees understand what we look for in surveillance.

We will take a flexible and scaleable approach, recognising that the general obligations are designed to apply flexibly to cope with such a large regulated population. Our approach acknowledges that how you comply with the obligations will vary depending on the nature, scale & complexity of the business. In the end, we may set out minimum expectations, but it will be for the licensee to determine what it must finally put in place to comply.

We discuss our expectations of you, to:

- establish & maintain appropriate compliance measures. We expect that these will be documented and form part of your overall systems. We suggest you refer to the Australian Standard on compliance, for guidance.

- have adequate procedures to monitor, supervise & train representatives. These may include procedures covering:
 - Identification: are they appropriately authorised
 - Competence: licensee will determine needs (guidelines in PS 146)
 - Supervised: for example, where you use a paraplanner
 - Trained: keep records of training
- We expect you to have appropriately knowledgeable & skilled responsible officers (this requirement replaces PS 138, but PS146 has been adapted and still applies)
- And we expect you to have adequate risk systems (unless APRA regulated) - which is a new obligation. There is an explicit obligation to take into account business risks and have measures in place to keep them to a minimum (again normally documented). We have suggested you refer to the Australian Standard on risk.
- have adequate human & IT resources (unless APRA regulated). Again this is normally a documented analysis.

Slide 13 PDS & other disclosure obligations [PS 168]

In our Policy Statement on PDS (and disclosure obligations) we recognise the PDS provisions have been designed to work in a flexible way and that how you comply is up to the product issuer. This means that specific guidelines for all instructions are not possible or warranted. We have however issued some general guidelines to help product issuers and to promote the objectives of these provisions ie making informed choices and helping consumers to compare financial products.

To this end, we have developed "Good Disclosure Principles":

1. Disclosure should be timely
2. Disclosure should be relevant and complete
3. Disclosure should promote product understanding
4. Disclosure should promote comparison
5. Disclosure should highlight important information
6. Disclosure should have regard to consumers' needs

This guidance may be equally applied to FSGs, SOAs and in advertising. Disclosure is key to meeting our consumer protection mandate and we will not be afraid to use

enforcement measures (eg interim stop orders) where warranted, in the interests of transparency.

You must provide warnings to the consumer, both for general and personal advice, and you have an obligation in a recommendation situation to provide a PDS. Offences and remedies apply for breach.

Slide 14 Disclosure of fees and charges

As you would be aware there has been a lot of noise about the disclosure of fees and charges (including commissions). One of the good disclosure principles states that "disclosure should promote product understanding" and specifically talks about the need for clear, concise and effective disclosure in relation to the disclosure of fees and charges. This information is a key consideration for consumers making financial decisions and is critical to enable comparison of similar products. Treasury has noted that whilst the regulations provide some detail as to what is required to be disclosed in a PDS for superannuation products, the regulations do not prescribe the form of disclosure of fees and charges for other products: the Government is proposing to monitor the experience with the disclosure regime to determine whether further prescription is necessary.

We have commissioned Ian Ramsay to lead a new project to foster better disclosure of fees and charges in the product disclosure statements for investment products. This project follows the release on 28 November of ASIC Policy Statement 168: *Disclosure: Product disclosure statements (and other disclosure obligations)* which foreshadowed further work to promote product comparability through the use of the new product disclosure statements.

The first stage in the project will be the preparation of an options paper on how ASIC, industry and consumer groups can work together to produce effective disclosure of fees and charges for investment-linked managed investments, superannuation and life insurance products. This report will be available shortly.

While this project focuses on product disclosure statements and member or investor periodic statements (and does not examine disclosure of fees and charges in Financial

Services Guides or Statements of Advice), it is reasonable to believe that the options suggested may eventually have implications for wider disclosure practices than just the PDS.

Compensation arrangements

You will recall that one of the licensee obligations I mentioned earlier requires licensees to have adequate compensation arrangements in place. This issue has attracted a lot of debate: ASIC are assisting Treasury in a consultative role, with the compensation arrangements (FSR) policy, of which Professional Indemnity is a consideration. This includes consideration of whether Professional Indemnity is an option for compensation or is better used as a backstop against insolvency of the entity in the event of a claim, and whether PI is a quick and easily accessible means to compensation for consumers.

Treasury are planning to release a paper on the compensation arrangements policy by June 2002, for public consultation.

Slide 15: PS146

PS146

Final policy statement 146 was issued on 28 November 2001, setting out minimum training standards for people who provide financial product advice to retail clients. You will notice that the final policy statement remains committed to the general approach of IPS146. There have however been some changes to the financial products included in Tier 2: broadly these products are general insurance products except for personal sickness and accident, consumer credit insurance, basic deposit products and non-cash payment facilities.

We have also simplified the compliance dates, by dividing the various compliance dates into three main groups depending on the type of financial products on which advice to retail clients is provided. You will need to refer to the Table of compliance dates in the Policy statement, but to give a broad idea: Advisers such as financial planners who advise on securities, MIS, public offer super etc must meet the training standards by the 30th June 2002.

Licensees who provide financial product advice must ensure that all natural persons who provide financial product advice on its behalf (including the licensee, if it is a natural person) meet the training standards, by the correct compliance dates: these dates may be before or after the licensee has transitioned.

Customer service representatives who are only providing financial product advice derived from a script do not have to meet the training standards. If advice is required outside the script – this must be referred to a party who meets the training standards. Naturally customer service operators must be monitored to ensure they are only operating within the scripted limits.

Paraplanners, performing functions such as collecting information from retail clients about their objectives, financial situation or needs; preparing draft Statements of Advice and assisting in the explanation of financial product advice to retail clients, will not need to meet the training standards provided a person who *does* meet the training standards plays a material role in, and remains responsible for (together with the licensee), the provision of financial product advice to retail clients. This means that a person meeting the training standards must firstly, review any draft Statement of Advice prepared by the paraplanner with a view to assessing whether all legal obligations have been complied with, and take any necessary action to ensure compliance. For example, the trained person may need to obtain further information from the client or alter the draft Statement of Advice to comply. Secondly, the trained person must manage and lead any verbal explanation of the financial product advice to the client.

Where paraplanners are used in relation to the provision of financial product advice, we consider that the licensee must have compliance measures in place designed to ensure that a person who satisfies the training standards plays a material role in the provision of the advice. These measures must include an effective means of monitoring what paraplanners inform retail clients.

One final point to note: while we will not insist that your paraplanners comply with the training standards, you must ensure that your paraplanners do have the necessary competencies to perform their functions.

Also of concern has been the treatment of factual information. We address this in our guide titled “The scope of the licensing regime: Financial product advice and dealing” (available on our website). The basic test is if the communication does not involve a recommendation or a statement of opinion, or a report of either of those things, it is not financial advice. We consider that factual information is objectively ascertainable information whose truth or accuracy cannot be reasonably questioned, and that communications that consist only of factual information will generally not involve the expression of an opinion or recommendation and will therefore not constitute financial product advice. The only exception is where this factual information may reasonably be regarded as suggesting or implying a recommendation to buy or sell a product – in this case the lines aren't so clear.

Slide 16 PS146 key questions answered

Pre-1995 training

Advisers who have completed training that is listed on the ASIC Training Register (before 1 January 1995) will generally need to demonstrate that their knowledge and skills are complete and current, particularly in the areas of regulation, compliance and disclosure. This means producing evidence of relevant continuing training or undertaking approved supplementary or gap training.

For pre-1995 training courses that are not listed on the ASIC Training Register, we offered a limited window of opportunity until 28th April 2002, within which time the industry was able to submit a course to ASIC for approval. This issue had attracted a lot of debate in recent times, which is why this approval arrangement was put in place: At the end of the period, National Finance Industry Training Advisory Body (NFITAB) had received applications for 10 courses to be added. ASIC has worked with the National Finance Industry Training Advisory Body to assess courses conducted prior to 1995, for eligibility. The ASIC Training Register lists all courses that are assessed as meeting the requirements of PS146, and those approved in consultation with NFITAB as eligible will be added when the register is updated.

Options to comply with PS 146

There are a number of options available to advisers to meet the training standards including completing an approved training course or courses listed on the ASIC training register at either Tier 1 or Tier 2, depending on the types of financial products you are advising on.

Advisers who have at least 5 years relevant industry experience over the immediate past 8 years in areas in which they advise, are eligible to undertake individual assessment. This can include exams or on the job assessment.

Non-compliance with training requirements

After the applicable compliance date, an adviser who does not meet the training standards must not provide advice to retail clients in any area or on any product.

A final note on PS146: our experience with FSRA to date indicates that people are not reading the policy statement before making enquiries of ASIC about training type issues. I encourage you to read the Policy statement, refer to the Q and A's on our website (as your question may already have been asked and answered) and to generally avail yourselves of the guidance we have issued to make the transition to FSRA easier for yourselves.

Slide 17 FSRA: key messages

Finally on FSRA, I have a number of key regulatory messages on FSRA, many of which come from our experience to date with FSRA and many of which stem from expectations we have of industry:

- Surveillance/enforcement strategy from Day 1

We are taking our usual approach to deliberate non-compliance and systemic non-compliance ie we consider breaches like this as serious and will use our whole regulatory tool box to address these breaches, including enforcement.

For those people who are genuinely trying to comply we will take this into account, particularly if there has been some legal uncertainty. We fully expect industry to report breaches. We expect to be notified of non-compliance and reasons why, and also of what action has been undertaken to address the breach.

- Relief applications

From Day 1, relief applications have been, and will continue to be, assessed by appropriate staff, and we will monitor the applications we receive to establish trends. The trends may indicate that we can adjust our policies to reduce the applicants need to apply for relief.

- Licensing implementation

Read the guidance and information we have issued on our website, before you go into our electronic licensing system to apply for an AFSL. Reading the information and FAQs from our website will prevent you making basic mistakes with your application, which simply result in you having to re-apply.

- Challenges/issues

A new law always comes with new terms and new questions. While we have provided some guidance in relation to the interpretation of certain terms, we are unable to provide legal advice to industry. Implementation of FSRA has already demanded, and will no doubt continue to demand, high levels of ASIC resources in order to see the transition through.

We are committed to ensuring our staff are sufficiently trained and have the requisite knowledge and capabilities to deal with the ongoing fluctuation of licence applications and other issues.

- Consumer information

We have updated FIDO so that it includes information relevant for consumers in relation to the impact FSRA will have on them and their relationship with their advisers, particularly in relation to the new disclosure requirements.

We encourage transitioning in one hit and we also encourage you to plan and apply early. On this note it is pleasing to see that some financial planners have already applied for their AFSL.

Slide 18 Clarifying the application process

From our experience to date, we are seeing a number of common misunderstandings on the part of licence applicants, most of which relate to specific transitioning issues:

1. Many applicants are not understanding the difference between streamlined assessment and composite assessment

If you:

- hold a pre-FSR licence or insurance broker registration and
- you want to be authorised to provide *the same* financial services and products you're currently authorised to provide, then

you may be entitled to an AFS licence under the **legislative streamlining** process, and generally won't need proofs.

For more on legislative streamlining, see *Licensing and disclosure: Making the transition to the FSR regime — An ASIC guide* (Oct 2001).

- If you are not entitled to legislative streamlining we will assess your application against the statutory criteria in the Corporations Act (**ASIC licensing process**). Under this process, you will need to give us all required proofs, including criminal history or bankruptcy checks and resumes for nominated responsible officers.

If you hold a pre-FSR licence or insurance broker registration and you want to be authorised to provide more financial services and products than you are currently authorised to provide, then you may be able to use a **composite process** that combines elements of legislative streamlining and the full ASIC licensing process.

In this case, you lodge one application which incorporates an application covering those products and services for which you are entitled to legislative streamlining, together with an application for a variation to extend the scope of your AFS licence to cover any other services and products that you intend to provide.

2. What authorisations do you need?

Some applicants have selected *more or different* financial products than they were authorised to provide under their existing licence or registration, but tried to use the streamlined process.

For example, we were not aware that the definition of “securities” under FSRA is narrower than before, and unwittingly selected a broader range of products than they were currently authorised to provide.

The old definition of securities included debentures and interests in managed investment schemes as well as shares, but the new FSRA definition only includes shares. So some securities dealers who hold restricted dealers licences to deal in securities (for example, debentures or managed investments) incorrectly selected “securities” ie shares in their application but they aren’t currently authorised to deal in or advise on shares.

Likewise, some securities licensees selected “insurance, miscellaneous and banking products” in their application but were not licensed to do so in the past. These dealers should have submitted *composite* applications, rather than trying to streamline completely.

Importantly for your industry, existing dealers licence holders who select “deal” only and not “deal” and “advise” won’t be able to continue to advise. The definition of “advice and deal” has been split and you must apply for *both* authorisations in your AFS licence application. See *Licensing: The scope of the licensing regime: Financial product advice and dealing: an ASIC guide*, Nov 2001.

Some applicants don’t understand what the authorisation to give “general advice” actually means. In some cases, the choice of “general advice” doesn’t add up in the context of the applicant’s business. For more about “general advice”, see:

- s766B of the *Corporations Act* and
- *Licensing: The scope of the licensing regime: Financial product advice and dealing: an ASIC guide*, Nov 2001.

If you select “general advice” without understanding what it means, you may delay assessment of your application while we ask you to give further information on the nature of your business.

We strongly recommend you study Policy Statement 164 on Organisational capacities, and ensure that you take steps to measure up to its requirements on systems, education and

experience before you apply. You should also study Policy Statement 167 dealing with discretionary powers and licensing to work out whether you need a security bond.

3. What's the difference between representatives and authorised representatives?

When you answer the questions about representatives and authorised representatives, remember that they are two separate things. Broadly, a representative is an employee or director of the licensee.

“Authorised representative” is, again, broadly, a person, external to the organisation, who is authorised to provide a financial service or services on the licensee’s behalf.

4. What if you have retail clients?

The licence application asks you whether your client groups are retail or wholesale. If you have retail clients, it is expected that you will have a greater focus on consumer protection. As such, it has an impact on the authorisations you may receive on your licence and also on the proofs you may be asked to provide.

5. Who can apply for a qualified licence?

Only insurance multi-agents can apply for a qualified licence. A qualified licence only authorises providing advice and/or dealing for general insurance products, investment life insurance products and/or life risk insurance products. You must also provide the proofs asked for in your application (see our *AFS Licensing Kit*, Section 1).

As a final note, when you've completed your application, check and re-check your answers to ensure you've answered them correctly and accurately - incorrect applications will be returned (without the fee in some instances) and it is actually a criminal offence to make false statements in your licence application.

FSRA will no doubt bring about some changes in your industry: while there is no reason to assume growth won't continue to be strong in the Financial Planning Profession, we may see different structures, as planners rationalise or merge to lower administration costs.

Additional expense will be incurred by those planners having to outsource some of their administrative responsibilities.

Having said that, the overall implications of FSRA on planners should not be great: you are, for the large part, already trained to the necessary competency standards and have in place compliance systems.