Australian Advice Network Response

AFSL 472901

ASIC Consultation Paper 329

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Overview

Australian Advice Network (AAN) is privately owned AFSL 472901. The following is a response to the Consultation Paper provided by ASIC regarding recommendations by the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry. AAN received its license in March 2015 and provides licensee services to five practices with 29 Authorised Representatives plus 6 Corporate Authorised Representatives. These practices manage just under $1billion of assets for clients and substantial personal insurances.

AAN does receive commissions on insurance products and would argue there is a place for this but all other fees are client directed and fully disclosed both within advice documentation and fee disclosure documents. AAN does not receive any fees in the form of rebates from product providers and has negotiated substantial discounts for clients within the products and investments we utilise. Under Corporations Law, Section 923s, AAN is not classed as independent

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It is AAN's position that further compliance impost will do little to improve financial advice and will not improve consumer protections or experience.

While we are not trying to understate the travesties the Royal Commission (RC) reviewed, it can be argued, a large portion of the cases were provided from the complaints department of ASIC from the previous ten years. This can give a skewed view of the industry and should not be the only information used when formulating a response. Justice Hayne was suitably horrified however his recommendations only have this experience as a lens for their design.

> The RC was reviewing work as far back as 2008. Future of Financial Advice Reforms (FOFA) had only been enacted since 2013 and even then it took two years for those reforms to be fully implemented. The Life Insurance Framework only came into effect 1 January 2018.
>
> The FASEA Code is still being introduced along with vastly improved minimum education standards for advisers

These are all changes that were introduced to deal with issues that were identified well before the RC and Commissioner Hayne was involved.

Is imposing even more legislation on an industry that has had no chance to show the positive impacts of these existing requirements justified and will it provide better consumer outcomes?

- We would suggest that the existing framework needs time to be reflected in outcomes and that additional legislation will only place professional advice even further out of reach for most Australians due to the ever increasing regulatory and practice costs.

- We agree that higher education standards will improve consumer outcomes and do not object in any way to improving ethical education across all participants. We would actually be keener to see the government continue with the 2024 time line but we do understand that our practices and license are not atypical.

Unfortunately, with the new education standards there are no plans to ease the compliance burden on advice practices and based on current recommendations costs will continue to escalate.

Another large piece of the RC was to do with conflicted remuneration and recurring revenue. There is a misconception that 'professionals' are totally non-conflicted and that recurring revenue is particular to financial advice.

The Medical Profession

A common example used is the medical profession. Many commentators point to these services as transactional. You only see a doctor when you are sick. This totally ignores Medicare and private health care benefits which are collected monthly. This ignores the subsidies that the whole profession receives in the infrastructure of hospitals and surgical theatres.

If a patient had to pay the full cost of their medical appointment on the day they would never attend a meeting.

Accounting

Accountant's fees are tax deductible and many accountants have moved to collecting fees monthly to reduce the impact of the annual bill and then dealing with bad debts. This does not apply to straight tax return client and increasingly, qualified accountants direct one off tax returns to tax agents as it is unprofitable business.

Legal

Lawyers' fees are also tax deductible and while many relationships are transactional, the actual requirement to seek legal advice is mandatory. If you look at mergers and acquisitions, conveyancing, asset sales, court appearances and litigation, clients have an option on who they use, but they will be instructed to use a lawyer.

General Insurance

Lastly, even general insurance is treated differently to advice. If you lease premises, run a business, own a car mortgage or rent a property, the underlying insurances are not optional, they are prescribed. You can choose your provider but you do have not a choice on whether you have insurance or not.

Intrafund advice and Vertically integrated advice are one and the same.

Recommendation 3.3 specifically excludes intrafund advice yet points to vertically integrated advice as problematic and conflicted. Given these are one and the same ASIC is creating an incentive for large retail and industry funds to create a heavily conflicted model with its endorsement.

Based on this recommendation, retail funds can collect fees similarly to industry funds and as long as this is deemed to be intrafund advice, the regulator will have no concerns.

As a license we regularly see intrafund advice and we can collectively argue the majority is flawed, poorly constructed and is built to retain assets under management, not to provide an advice service. We would recommend ASIC review this advice provision before accepting the RC's very simplistic view of vertical integration

Paper 329 recommendation

B1

Written consent that fee recipients must receive from clients before deducting, arranging to deduct or accepting the deduction of ongoing fees from a clients account

The current fee disclosure include:

- Letter of engagement
- Statement of advice (SOA) – all fees fully disclosed in both dollar and percentage terms
- Application form signed by the client with Adviser service fee included
- Record of Advice (ROA) – any changes in fees due to advice fully explained at each meeting with clients
- Fee Disclosure Statements sent annually to all clients with disclosure of all fees paid to the advisers license.

B1 is just an ever increasing effort to go further and further down a rabbit hole with no clear consumer benefit in sight

Consumers are already advised

- The amount of fees they have paid
- The services that were provided and the services they are signing up for in the future.
- The products those fees were collected from.
- They receive this every year
- They explicitly sign off on this every two years.

The pre FOFA clients should have been picked up in reviews and fee changes by now, but if any have not AAN would suggest all adviser service fees should be subject to opt-in.

We still need to treat clients as adults. Ultimately they make decisions and if they know the fees they pay, it is up to them to decide on the value they are receiving and whether they continue to use that advisers services. No amount of box ticking can take away from the consumer's responsibility to make a decision.

The RC was largely targeting grandfathered fees and legacy products that continue to pay pre FOFA fees. Grandfathered fees are now banned and you are looking to include pre FOFA fee paying clients.

Commercial arrangements are simply that – consumers will not pay fees if they don't believe they are getting value and they demonstrate this every day.

The value of Advice

Financial advice adds substantial value to our clients lives and we have any number of happy clients who support this.

There have been recent studies which talk to not just the financial benefits (International Longevity Centre, 2019) but the impacts on health, relationships and personal happiness. (Core Logic 2018, IOOF 2015)

While writing this I know every adviser in my group has been pro-actively talking to wealth clients and helping them through a very difficult period. I also know they were pro-actively de-risking clients in 2019 in line with the groups concerns about stretched valuations.

As an example of the simple value of advice, we received a thankyou from a client who we reviewed in January 2020. He let his adviser know he planned to redeem $570,000 in June this year as he was buying an investment property. The adviser prudently explained that the client's

investment horizon had changed and the needed funds should be moved to cash. The client argued against this but when the unnecessary risk he was taking was explained he accepted our advice. That client would already have seen that $570,000 erode by $142,500 (25% to 16 March 2020)) if he had kept those funds invested. We were not being clairvoyant – simply providing professional strategic advice.

Will adding even more fee documentation to the raft we already provide, add any value to that client or all the clients we have contacted in the last two weeks.

AAN would argue, let the existing framework be appropriately enforced, include pre FOFA clients and have clients opt-in annually with a simple re-engagement letter explaining the fees they have paid, from where they have been deducted and a statement that we would anticipate no substantial increase in fees in the next twelve months if that is the case. If there was to be a fee increase, that would need to be explained and commercially justified but that would be the exception, not the norm.

B2

Written consent that superannuation trustees must receive from members before allowing non-ongoing fees to deducted from a members account.

This is a cumbersome and ineffective way of trying to make Trustees accountable for every dollar that leaves a members account. This may make it easier to sue a trustee but in large public offer funds it is just a costly tick box tool. It is likely the unintended consequences will be a declining number of qualified personnel willing to sit as Trustees. We have seen the same problem for Independent Board Members in the Australian Institute of Company Directors (AICD).

This sort of prescription is simply too granular for a Trustee board to manage and goes to operational issues rather than Trustee issues.

If the Trustee has to manage this new process, we would argue that the client, in their annual opt-in or annual fee arrangements, should sign one form that satisfies the AFSL license and the Trustees of any products. One signature, on one form, which shows the fees and where they are deducted from and they agree to pay those fees for another twelve months.

Once again we would argue that we must treat clients as adults who make informed decisions.

B2 Suggestion: Ban non-ongoing fees to be deducted from a members superannuation account but make the initial advice fee tax deductible. The possibility that an initial advice consultation will cover more than superannuation is very high so better for the trustees to remove this potential conflict but give the client the ability to claim a tax deduction on the advice.

B3

Statement that must be included in an FSG or supplementary FSG about a providing entities lack of independence.

Commissioner Hayne was clearly trying to make it as easy as possible for a consumer to differentiate a vertically aligned adviser, whose salary was influenced by a parent company generating revenue through a product recommendation, and an adviser who was not influenced in any product placement.

Rather than address the actual problem B3 is yet another band aid to try and overcome the poorly worded Corporations Law, 923s. The definition of independence is flawed and does not help the consumer

- By example, AAN collects commissions on life insurance products and believes this is the only way to manage this particular part of the advice chain. We have access to the entire insurance universe of products and under the Life Insurance Framework we are paid the same no matter who we use. There is an argument that we are incentivized to write large sums insured but this is an advice issue, and ASIC rightly can review our insurance philosophy to ensure we have robust processes in how we calculate appropriate levels of insurance.
- With wealth management we have negotiated discounted platform fees for our clients and negotiated fund manager rebates for our clients within those platforms. Every dollar goes to the client with no benefit to the license.
- Even though we literally save over $1.4m of fees for our clients every year through the discounts we have negotiated, because we take one dollar of commission, we cannot be called 'independent'.

If we ran our own direct equity pools and charged an asset fee on those, inside our own SMSF administration service but did not charge any insurance commissions we would be classed as independent. This is arguably a much more highly conflicted model, but satisfies 923s.

AAN would argue that 923s should be fixed first, so a consumer can clearly differentiate between a product aligned adviser and independent adviser, then the disclosure would actually achieve what it is setting out to achieve.

In regards to the actual disclosure, we agree that it should be in the FSG

The below is already on the AAN Website. https://australianadvicenetwork.com.au/about-us

Does this mean AAN is independent?

- Under the Section 923a of the corporations Act, to be independent you must receive no commissions from any provider and AAN does receive commissions on insurance products. Under the Life Insurance Framework (LIF), commissions are the same no matter which provider is used and as such play no real part in the selection of who we would recommend however this means we do not qualify to use the terms 'independent'.
- AAN does have access to most product providers and through a rigorous selection process, have filtered that list (mainly on the investment side) to providers our investment committee believes can deliver results in the medium to long term.

Like all Australians, I was extremely disappointed in my industry while watching the proceedings of the Royal Commission and accept that the behaviors it uncovered were often indefensible.

The concern I now have is that the perpetrators of a very large portion of these bad behaviors have now left the advice industry and we and other privately owned licensees are dealing with consequences targeted at institutions that no longer exist. The compliance regime being imposed is for large licensees subsidized by large amounts of product revenue.

Many of the remaining licensees are 'at cost' solutions and the ever increasing compliance burden continues to inflate advice costs for the Australian Consumer and I would question the benefit.

Part of ASICs charter is to ‘promote confident and informed participation by investors and consumers in the financial system’ and AAN would posit that the reforms that are already embedded will achieve this with appropriate enforcement.

Well educated, supervised ethically aligned advisers with appropriate resources can provide advice to the Australian Consumer with far less paperwork than the current system requires and that is what we need to work towards.

Best Regards

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