



8 September 2014

Committee Secretary  
Parliamentary Joint Committee on Corporations and Financial Services  
By email: [corporations.joint@aph.gov.au](mailto:corporations.joint@aph.gov.au)

To the Committee Secretary,

**Re: Inquiry into proposals to lift the professional, ethical and educational standards in the financial services industry.**

CHOICE welcomes the opportunity to provide comment on lifting standards in the financial services industry. CHOICE has spent more than two decades investigating and warning consumers about conflicts of interest in the financial advice industry.

As recent inquiries and numerous financial advice scandals have shown, too often financial advisers have placed their own interests ahead of consumers and used their relationship with clients to sell products that have been unsuitable. The result is that consumers have lost billions from mis-selling and conflicted financial advice.<sup>1</sup>

#### **Adequacy of current qualifications required by financial advisers**

Current education and qualification requirements for financial advisers are extremely inadequate.<sup>2</sup> You can qualify as a financial adviser with \$1500, less than a week of study and an open-book test.<sup>3</sup>

Recognising that currently advisers come from a range of educational backgrounds, CHOICE's preference is for the immediate establishment of a national exam. The standards for an exam should be set by an independent standards setting body.

CHOICE supports the phasing in of education standards over time, working towards a relevant university degree and specific training to provide the independent advice consumers require. Standards should be raised for advisers giving advice on complex products, including SMSFs. CHOICE also supports calls for financial advisers to meet

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<sup>1</sup> Consumers have lost \$5.7 billion in major financial scandals including losses from Opes Prime, Storm Financial, Timbercorp/Great Southern, Bridgecorp, Fincorp, Trio/Astarra, Westpoint and Commonwealth Financial Planning sourced from figures in ASIC, 2014, *Submission to the Financial System Inquiry*, pp. 192-193 and Industry Super Australia, 2014, *Exposure Draft: Corporations Amendment (Streamlining of Future of Financial Advice Bill 2014, ISA Submission*, pp. 37-38.

<sup>2</sup> See Senate Standing Committee on Economics (June 2014), *The Performance of the Australian Securities and Investments Commission* and Parliamentary Joint Committee on Corporations and Financial Services (November 2009) *Inquiry into financial products and services in Australia* p 13, 129.

<sup>3</sup> Klan, Anthony (30 August 2014) "Need help losing your nest egg? With my four-day \$1425 diploma I can help" *The Australian* <http://www.theaustralian.com.au/business/financial-services/need-help-losing-your-nest-egg-with-my-fourday-1425-diploma-i-can-help/story-fn91wd6x-1227041890722>

#### **Unlocking the power of consumers**

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Continued Professional Development (CPD) requirements similar to lawyers or tax practitioners.

These efforts, while important, will not resolve the systemic issues with financial advice. Increasing qualification standards without addressing structural conflicts will only lead to better educated financial advisers taking advantage of consumers.

### **Implications of requiring professional standards which would govern behavior of financial advisers**

CHOICE continues to call for a clear, professional obligation for advisers to act in the best interests of their clients, with no loopholes or exceptions. However, our preference is that this obligation is captured in law rather than as guidelines or requirements established by professional bodies.

Current a financial adviser is not required to act in the best interests of clients at all times. The *Corporations Amendment (Streamlining of Future of Financial Advice) Regulation 2014* (the Regulations) made several amendments to the definition and scope of the best interests duty.<sup>4</sup> These changes leave only a 'tick-a-box' checklist to assess if an adviser has acted in the best interests of their client, with no mention in this checklist of acting in a client's best interests.<sup>5</sup>

An adviser is able to bypass the duty to act in their client's best interest when scoping advice. The Regulation inserts a note that reads: "Nothing in section 961B of the Act prevents the provider and a client from agreeing the subject of the advice sought by the client".<sup>6</sup> An example is added to remove any doubt that an adviser is able to scale advice without considering the best interests of the client.<sup>7</sup> Rather than addressing the information asymmetry in the client-adviser relationship, these changes allow the lack of knowledge a consumer has about finance to be exploited, as the adviser is able to steer a consumer into scaled advice which is restricted by, for example, the type of provider, product or risk.

CHOICE recognises that scaled advice can be a valuable and more affordable service for many consumers but an adviser must always act in a client's best interests, with that duty applying from the moment they meet with a client. A consumer is unlikely to realise that an adviser will only act in their best interests at a certain point when receiving scaled advice. In addition, these changes legalise sales-driven strategies and one-size-fits-all

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<sup>4</sup> The *Corporations Amendment (Streamlining of Future of Financial Advice) Regulation 2014* removes the requirement for advisers to prove they meet the step outlined in 961B(2) of the Corporations Act 2001, specifically 961B(2)(g) is removed, leaving only six process based steps to meet the test.

<sup>5</sup> For example, tax agents are simply required to "act lawfully in the best interests of your client." See [http://www.tpb.gov.au/TPB/Subsidiary\\_content/Reg\\_info\\_sheets/0296\\_Code\\_of\\_professional\\_conduct\\_information\\_sheet.aspx](http://www.tpb.gov.au/TPB/Subsidiary_content/Reg_info_sheets/0296_Code_of_professional_conduct_information_sheet.aspx)

<sup>6</sup> *Corporations Amendment (Streamlining of Future of Financial Advice) Regulation 2014* s 7.7A.2 (2), note one.

<sup>7</sup> See *Corporations Amendment (Streamlining of Future of Financial Advice) Regulation 2014* s 7.7A2 (4): "Example: A client approaches the provider intending to seek advice on a particular subject matter. As a result of discussion with the provider, the client decides to instead seek advice on a narrower subject matter. The obligations of Division 2 of Part 7.7A of the Act apply to the advice ultimately sought."

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approaches to advice by excluding the initial investigations stage of an advice relationship from the best interests duty.

Other loopholes created by the Regulation allow advisers giving certain types of personal advice to meet a reduced best interests duty. Again, a consumer is unlikely to be aware of this restriction and the risk of mis-selling is high. For example, an adviser is now also able to place their own or their employer's interests ahead of their client's when giving personal advice on basic banking, general insurance or any combination of these products. A reduced best interests duty is inappropriate for any type of personal advice.

### Removal of conflicts of interest

Any incentive to sell a volume or type of product is an unacceptable conflict of interest for a financial adviser, yet many conflicts are legal and common practice. Conflicted payments place the interests of the adviser into direct conflict with the interests of the client. CHOICE believes that financial advisers should be banned from accepting any commissions, trails and asset-based fees due to the influence these forms of payment have on the quality of advice.

Again, recent reforms to the Future of Financial Advice (FoFA) protections reduced essential consumer protections. The Regulation reintroduced certain types of conflicted payments that will influence the quality of advice consumers will receive.<sup>8</sup>

Asset-based fees were not dealt with by any iteration of the Future of Financial Advice reforms yet have many of the same market distorting features created by commissions. Fixed fees for advice, either hourly rates or lump sums, remove these failings.<sup>9</sup>

The reform of education standards is vital to lift the quality of financial advice but this must be done alongside clear obligations for advisers to act in the best interests of their clients and the removal of all conflicts of interest. These changes are required to deliver the independent advice consumers need to navigate complex financial decisions.

For further information please contact CHOICE on [eturner@choice.com.au](mailto:eturner@choice.com.au).

Yours sincerely,

A handwritten signature in black ink, appearing to be "ER" followed by a long horizontal line.

Erin Turner,  
Campaigns Manager

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<sup>8</sup> For further information on the consumer impact of these changes CHOICE, 2014, *Submission to Senate Committee on Economics Inquiry into Corporations Amendment (Streamlining of Future of Financial Advice) Bill 2014*.

<sup>9</sup> For further information see CHOICE, (2014) *Submission to Financial System Inquiry Interim Report*.

<http://www.choice.com.au/~media/Files/News/aug-14/CHOICE%20Submission%20to%20FSI%20Interim%20Report.ashx>

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