

**SUBMISSION ON POLICY ISSUES IDENTIFIED IN THE INTERIM REPORT**

Submitted By: [REDACTED]

Email: [REDACTED]

Phone Number: [REDACTED]

Submission for: My Self

Name of other person, business or organisation:

Do you agree to your submission being published: Yes

Do you agree to your full name being published: No

Your submission:

14 October 2018

**To: Financial services Royal Commission (response to Interim Report)**

Dear Commissioner

My submission relates to conflicted remuneration as per Section 2.2 (page 91 of the interim report). It is likely that grandfathered conflicted remuneration will be abolished and in-fact the ABA as well as the FPA has recommended as such.

My submission is that the definition of conflicted remuneration is currently too narrow. If we are to truly make conflicted remuneration (commissions) a thing of the past, then the definition needs to be broader.

Currently *Section 963A of the Corporations Act defines conflicted remuneration as*

*as 'any benefit (whether monetary or non-monetary) given to a financial services licensee or a representative of the licensee, who provides financial product advice to persons as retail clients, that, because of the nature of the benefit or the circumstances in which it is given, could have either or both of two effects:*

- *It could reasonably be expected to influence the choice of financial product recommended by the licensee or representative to retail clients; or*
- *It could reasonably be expected to influence the financial product advice given to retail clients by the licensee or representative.'*

I submit this is too narrow a definition in large part because it only covers remuneration given to a financial services licensee or a representative of the license.

IT should include payments made to any party, including those that are not licences or authorised representatives.

For example, it is not uncommon for financial planning business to have referral relationships with Accountants whereby they pay a percentage of revenue which they generate from financial product advice from referred clients. This may be a share of upfront revenue or ongoing revenue (say a % share of 20%). As it stands, this does not meet the legal definition of 'conflicted remuneration; as the Accountant may not be authorised representative or a licensee.

However, in substance, the revenue is conflicted remuneration as it is

1. A passive income stream received by the Accountant which has it's root in remuneration received from financial product advice.
2. There is no defined service provided by the Accountant for receipt of this income. It was merely a referral provided at a point in time.

In fact, there is also a loophole that referral remuneration may be paid directly from a product provider (eg. Say a managed fund), not via an intermediary such as a financial planner, which would not be defined as conflicted remuneration.

I have become aware of a 'consultant' who introduces clients to a Mortgage Fund – claims to provide no advice and simply introduces the client to a representative of the Mortgage Fund. The Mortgage Fund then pays a trailing commission to the introducer. Once again, as the Introducer is not a Licensee or Authorised Rep, presumably this falls outside of the ban of the legislation.

**Potential solution**

I understand that it may be difficult to encompass non ARs/Licencees into the legislation.

Therefore the solution may be to imposed the ban on payment (As opposed to receipt). ie *financial services licensee or a representative of the licensee are banned from paying conflicted remuneration to any party.*

This will help eliminate conflicted remuneration in substance.

**Other issues**


The truth is that even the above does not go far enough to erase conflicted remuneration. Because there is still the situation where an entity which is not an AFSL or AR may pay commission to a non-AR.

A common example of this is a property developer (who does not fall under AFSL licencing) paying a introducer commission to an Accountant or Mortgage Broker (non-AR or AFSL) for introducing clients. Once again, there is no defined service offering and it is clearly a commission.

I have personally seen many examples of this. Commissions can be up to 10% and the products are subs-standard and have led to poor outcomes for investors, yet the Accountant pockets to commission.

But as it stands, this falls outside of the ban as well as they are not AFSLs or ARs.

I am not sure exactly how you could ban this given the structure of legislation as it stands applies particularly to AFSL and ARs. However, perhaps there can be a more general, wider provision in the legislation that bans this form of remuneration, regardless of the licencing (or non-licenced) position of the participants.

Whilst I do not want my name published, I would be more than happy to discuss this further. I can be contacted on 

  
Regards

