26 October 2018

ROYAL COMMISSION INTO MISCONDUCT IN THE BANKING, SUPERANNUATION AND FINANCIAL SERVICES INDUSTRY

The Financial Services Council (**FSC**) welcomes the opportunity to make a submission on the policy issues raised in the Interim Report.

The policy matters identified in the Interim Report raise a variety of difficult and complex issues, and we hope that the enclosed submissions will provide some assistance to the Commission in considering how they should be addressed.

This submission is divided into two parts:

1. Response to questions on Financial Advice; and
2. Response to other questions asked in the Interim Report.

At the outset the FSC acknowledges that it strongly supports The Banking and Finance Oath.

Please contact me with any questions in relation to this submission on (02) 9299 3022.

Yours sincerely,

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1. RESPONSE TO QUESTIONS ON FINANCIAL ADVICE

Australia's Advice Landscape

Australia's financial advice industry has significantly changed over the last few years.

Prompted by the corporate collapses of large financial service providers, the 2009 Parliamentary Joint Committee on Corporations and Financial Services (**PJC**) enquired into the provision of financial products and services in Australia. The subsequent report outlined 11 Recommendations for reform and has been a catalyst for significant changes to financial advice in the last 10 years[1]. Broadly, the PJC found that many, if not most, issues surrounding the collapses of Storm Financial, Opes Prime and others were a result of investors receiving poor quality financial advice.

The introduction of the best interest duty, opt-in obligations, provision of Fee Disclosure Statements (**FDS**) and the ban on conflicted remuneration through the 2013 Future of Financial Advice (**FOFA**) reforms was the beginning of a period of restructuring, designed to improve trust and confidence of Australian retail investors in the financial advice industry.

However, the Interim Report of the Royal Commission has highlighted many failings of the financial advice industry. The FSC acknowledges the misconduct and conduct falling below community expectations which came to light in the Commission's Round 2 Financial Advice hearings (**Hearings**). During the Hearings, the FSC stated its view that there is no place for criminality in the financial services industry, and wrongdoing should be met with the full force of the law.[2]

Treating customers honestly, fairly, and with professionalism must now be the key focus.

New legislative reforms[3] finalised in 2017 have introduced a new professional standards framework for financial advisers. This includes the establishment of the Financial Adviser Standards and Ethics Authority (**FASEA**) in 2017, a new professional standards setting body for the advice industry. This means that the educational and professional standards of financial advisers will be overseen by one body under a similar model to legal practitioners. The FSC considers that this framework will professionalise the advice industry and will raise the education and professional standards requirements across the board to strengthen the advice sector and enhance consumer outcomes.

The FSC has long been a supporter of increasing professional education standards. It also supported the creation of the Financial Adviser Register. The FSC considers that both these initiatives will professionalise and increase consumer trust in the industry.

The value of sound, customer-centric advice is something which cannot be understated. Advice is needed, at both an individual consumer level, for the consumer to benefit from expert advice on financial products and services; and at a societal level, to meet the converging challenges the economy, for example, an ageing population, the retirement savings gap, diminishing tax revenue, longevity risk, intergenerational asset transfer, and under-insurance. It is with the aim of ensuring sound advice continues to be given in the consumer's best interests that the FSC welcomes the opportunity to provide the following responses to the Commission's questions.

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[1] See the Parliamentary Joint Committee on Corporations and Financial Services: Inquiry into Financial Products and Services in Australia, November 2009
[2] Financial Services Council Press Release of 20 April 2018
[3] *Corporations Amendment (Professional Standards of Financial Advisers) Act* 2017

POLICY QUESTIONS

The FSC responds to the specific policy questions which arose from the Hearings as follows. Where we have decided not to respond to certain questions, no conclusions should be drawn as to our position on that question.

1. **How does a financial adviser's employer encourage provision of sound advice (including, where appropriate, telling the client to do nothing)?**

2. **How do advice licensees encourage advisers aligned with the licensee to provide sound advice (including, where appropriate, telling the client to do nothing)?**

The FSC suggests that appropriate legislation, policies and regulations exist to guide the provision of sound advice. The Hearings have highlighted that the issue is they are not being adhered to by some Australian Financial Services Licence (**AFSL**) holders and their representatives.

In relation to instances where it is appropriate for the adviser to tell the client to do nothing (that is, a hold recommendation), the adviser still has a requirement under the best interest duty to advise the customer in relation to their portfolio, as the adviser is providing personal financial product advice. It is well known that all obligations in Chapter 7 of the Corporations Act would apply in these circumstances.

The FSC considers that there are a number of initiatives AFSL holders could employ to encourage the provision of sound advice. They are:

- requiring ongoing education and training (the increased education and professional standards levels, as will be implemented by FASEA, will assist);
- monitoring and supervision of the advisers' practical application of the best interest duty and related obligations; and
- variable remuneration being tied to matters other than sales and profits (for example, customer satisfaction, and compliance with legislative requirements).

The FSC considers that Code Monitoring Bodies will have an important role to play in supervising adviser conduct in the future. ASIC expects these bodies to identify examples of good practice as part of their proactive monitoring activities and for these examples to be used to educate and inform financial advisers on how to improve their behaviour[4].

A further way in which advice licensees encourage advisers to provide sound advice is by adopting an approved product list (**APL**) for certain products. Used by many AFSL Holders, the APL is an important element in the advice process that facilitates the delivery of sound advice, as each product that is included on the APL is thoroughly researched by the advice licensees to determine whether or not it is appropriate for their customer base. For instance, under *FSC Standard No. 24: Life Insurance Approved Product List Policy*, members must consider the following matters before they include a product on their life insurance APL:

- claims philosophy of the provider

[4] ASIC Regulatory Guide 269 p.116

- underwriting practices of the provider;
- product features, benefits and consumer value for money;
- levels of service to consumers; and
- financial factors such as the financial stability of the insurer.

Under FSC Standard No. 24, relevant members must construct an APL for life insurance products in a way that enables the adviser to have at the adviser's disposal a range of alternative product offerings to enable the adviser to deliver advice in their client's best interests. The Standard requires that the AFSL holder must adopt a reasonable basis for constructing the APL. For example, it may be reasonable that an advice licensee with a large proportion of clients in high risk occupations has a different range of insurance products on its APL to cater for this particular client base.

Where a product does not satisfy the advice licensee's APL approval process, it is not included on the APL. However, advisers can still recommend these products to consumers by using the waiver process. Waiver processes are common, and under the FSC Standard, AFSL holders must have in place a process to consider products outside the APL where it would be in the client's best interests to do so. Further, advisers must not be unnecessarily restricted from advising clients regarding products that are not on the APL.

3. Questions 3 – 6: Can conflicts of interest and duty be managed? How far can, and how far should, there be separation between providing financial advice and manufacture or sale of financial products? Should financial product manufacturers be permitted to provide financial advice? Should financial product sellers be permitted to provide financial advice?

– At all?

– To retail clients?

Introductory Comments regarding Vertical Integration

The FSC considers that the reason for the conduct revealed in the Hearings is not the particular structure many financial product and service providers have adopted, but the payment of remuneration or benefits which incentivise the wrong behaviour. As such, the FSC agrees with many of the Commission's comments throughout the Interim Report regarding misaligned incentives.

Treasury also considers that the misconduct uncovered by the Hearings was caused by misaligned incentives and poor institutional culture.[5]

Further, the Productivity Commission's (**PC**) Inquiry Report - *Competition in the Australian Financial System* agrees with this view. The PC did not find any competition issues in the wealth industry that were clearly associated with integration. In its report it stated:

> *"Where poor consumer outcomes arise in these markets, these outcomes may be compounded by integration, but are more likely associated with poor transparency and adverse remuneration incentives that arise even absent integration."*[6]

[5] Treasury Submission – Financial Services Royal Commission – Hearings on Financial Advice

[6] Productivity Commission Inquiry Report – Competition in the Australian Financial System, No. 89, 29 June 2018, p. 267

It determined that structural separation would do little to remove information asymmetries, improve customer outcomes or increase competition.[7]

Definition of Vertical Integration

Vertical Integration refers to the situation where an entity or group provides two or more financial products or services at the different stages of production, which could instead be undertaken by separate or related entities[8]. Vertical Integration can take many forms. Some of these forms are as follows:

- product manufacturers establishing in-house financial advisory practices;
- two firms at different stages of production entering into a "white-labelling" arrangement;
- Authorised Deposit-Taking Institutions (**ADIs**) developing investment products and marketing these products through their in-house financial advisory practices;
- a relationship between an insurer, who develops insurance products for customers, and a broker, who match customers to insurers and their products;
- superannuation funds holding an AFSL or having a relationship (either of common ownership or a contractual arrangement) with an AFSL holder who provides personal advice to customers.
  This arrangement is common to both industry and retail funds. In 2014, the Association of Superannuation Funds of Australia (**ASFA**) surveyed its members and identified that they all provided general advice to members, while a substantial number also provided personal advice.[9]

As highlighted in the Interim Report, there are many benefits of Vertical Integration for consumers. Vertical integration results in cost efficiencies (such as lower transactions costs at each stage of the supply chain) which can be passed on to the consumer. Further, vertically integrated structures may provide a broader product offering to consumers, and enable them to treat the group as a 'one-stop shop' from which to obtain many of the financial services they require.[10] Additionally, vertically integrated institutions are also more likely to have capital to invest in technology and other innovations for the longer term benefit of clients and the industry in general.

Response to ASIC Report 562

The FSC commissioned Frontier Economics to consider ways in which conflicts of interest that may be found in vertically integrated structures could be managed. During this work, Frontier Economics considered ASIC's *Report 562 Financial Advice: Vertically integrated institutions and conflicts of interest* (**Report 562**) and questioned some of its conclusions[11]. ASIC found that in 75 per cent of the customer files reviewed, the adviser had not demonstrated compliance with the best interests duty and related obligations; and in 10 per cent of those cases it was apparent that the failure to do so meant that customers were likely to be significantly worse off.[12] In

[7] PC Inquiry Report p.272
[8] Frontier Economics Report, p. 2
[9] Association of Superannuation Funds of Australia 'Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry – Round 5 Superannuation Policy Issues Submission, 21 September 2018, p.18
[10] Frontier Economics Report, p. 10. We are happy to make the report available to the Commission if this assists.
[11] Frontier Economics Report, p.17-19
[12] ASIC Report 562, p.7 – 9.

reliance upon its research, ASIC concluded that the significant instances of non-compliant advice, coupled with the high proportion of funds invested in in-house products meant that advice licensees were not appropriately managing the conflicts of interest resulting from their vertically-integrated structure.[13]

Frontier Economics did not agree with this proposition. In its view, ASIC had not addressed the reason why licensees and their advisers had recommended in-house products to their clients instead of products manufactured by external providers. It was not clear from Report 562 that the non-compliant advice was as a result of the adviser prioritising the adviser's interests over the adviser's duty to the client. Frontier considers that there are a number of factors that may give rise to non-compliant advice, such as a lack of training to advisers on the steps that they are required to undertake to fulfil the best interest duty they owe to clients.[14]

The FSC considers that it is overly simplistic to conclude that ASIC's results are due to advisers failing to manage conflicts of interest, especially given the ban on conflicted remuneration has been in place since 2013. Further, it considers that there may be a lack of understanding on the part of advisers regarding the products of external manufacturers. As a result, advisers recommend products with which they are familiar.

Methods to Manage Conflicts of Interest under Vertically Integrated Structures

Despite the above comments, the FSC acknowledges that conflicts of interest can and do arise in vertically integrated structures and are not always managed appropriately. The FSC considers that the following innovations could be considered in order to better manage these conflicts of interests at an industry level:

- enhancing disclosure by advice licensees to consumers to enable the market to function effectively by customers having sufficient information to, where necessary, appropriately punish firms when they exploit conflicts of interest. Frontier considers that, for disclosure of conflicts to be effective, it needs to be relevant, meaningful, prominent and timely[15];
- ASIC maintaining a customer facing webpage which clearly indicates the entities that have arrangements with financial providers which are forms of vertical integration;
- AFSL holders certifying to ASIC annually that disclosure obligations underpinning the above webpage have been met;[16]
- enhancing accountability for breach of disclosure obligations by holding AFSL holders liable;[17]
- amending the Corporations Act:
    - to allow for proceedings by a customer for loss or damage suffered as a result of a breach of the best interest duty to be brought against an adviser, as well as an AFSL holder; and
    - to increase civil penalty provisions for breaches of the best interests duty;
- enabling ASIC to pursue enforcement action where disclosure obligations are not met;[18]

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[13] ASIC Report 562, p.9
[14] Frontier Economics Report p. 19-20.
[15] Frontier Economics Report, p.20-21
[16] Frontier Economics Report, p.21
[17] Frontier Economics Report, p.21
[18] Frontier Economics Report, p.21

- firms providing greater transparency regarding the use of APLs by their advisers (that could take the form of reporting the following matters to ASIC:
    - the number of in-house and external products on the APL; the proportion of in-house products that are recommended to customers;
    - the number of requests to recommend products that are not on the APL that the AFSL holder has received[19]; and
    - the number of such requests the AFSL holder has accepted);
- firms adopting a Principal Integrity Officer (**PIO**) who is tasked with advising the entity's board on conduct related to remuneration which may be inconsistent with customer's interests;[20]and
- ASIC auditing firms regularly to ensure they are appropriately managing conflicts of interest.

Further, the FSC suggests that consideration is given to the Australian Consumer & Competition Commission (**ACCC**) having a mandate to champion competition in the financial system, by making ACCC a permanent member of the Council of Financial Regulators.

Frontier considers that "*the decision-making framework should ensure that the net benefit advisers receive will be maximised when they act in the best interests of customers*." The FSC considers that this could be achieved by firms:

- reviewing the steps an adviser is required to follow to recommend a product that is not on the APL, and ensuring those steps are not unreasonably onerous; [21]
- ensuring the adviser receives the same remuneration and benefits, regardless of whether the adviser recommends products on the APL or products that are not on the APL;
- ensuring promotion or other advancement of advisers is not tied to promoting in-house products;
- developing a robust approach to conflict management, and ensuring all staff understand its importance through ongoing training and supervision;
- punishing breaches of the conflict management framework in a manner which creates a disincentive to pursue personal gain over the interests of the client;
- adopting the following governance structure:
    - separate subsidiary companies for each separate step in the production process (except where this is not possible, for example, where superannuation funds provide 'intra-fund' advice to consumers); and
    - a sufficiently independent board of directors for each subsidiary company.[22]

Please let us know if you would like a copy of the Frontier Report.

In reliance upon these comments, the FSC answers the Commission's specific questions below.

Questions from pages 155 – 157 of the Interim Report Financial Advice:

Can conflicts of interest and duty be managed?
Yes, the FSC believes so. The FSC relies upon the detailed comments under the heading *Methods to Manage Conflicts of Interest under Vertically Integrated Structures* above.

[19] Frontier Economics Report, p.23
[20] PC Inquiry Report, p.278
[21] Frontier Economics Report, p.22
[22] Frontier Economics Report, p. 27

How far can, and how far should, there be separation between providing financial advice and manufacture or sale of financial products?

The FSC submits that structural separation is not required. It submits that there has not been compelling evidence, either from the Commission, or from ASIC to conclude:

- the misconduct and conduct falling below community standards and expectations; or
- ASIC's findings in its Report 562 of failings to demonstrate compliance with the best interest duty and related obligations,

were due to the entities involved being vertically integrated. Rather, the FSC considers that the misconduct was due to a combination of:

- the payment of remuneration or benefits which incentivised the wrong behaviour;
- a lack of understanding on the part of advisers regarding the products of external manufacturers; and
- a lack of training to advisers on the steps that they are required to undertake to fulfil the best interest duty they owe to clients.

Should financial product manufacturers be permitted to provide financial advice?

The FSC believes that product manufacturers should be able to have a relationship with advisers/an advice licensee (whatever form this may take) whereby the adviser assists in the distribution of the manufacturer's products so long as:

- both the manufacturer and the advice licensee comply with their obligations in regard to the provision of financial product advice under the Corporations Act and other laws;
- both the manufacturer and the advice licensee report expeditiously to the regulator when they uncover breaches of the Corporations Act and other laws; and
- the regulator investigates breaches and takes appropriate enforcement action to deter unlawful conduct.

Should financial product sellers be permitted to provide financial advice?

– At all?

– To retail clients?

We are not clear as to the meaning of the expression, "financial product sellers", which the Commission has adopted. Assuming the Commission is referring to distributors of financial products, the FSC believes that distributors should be permitted to provide financial advice so long as distributors:

- comply with their obligations in regard to the provision of financial product advice under the Corporations Act and other laws;
- report expeditiously to the regulator when they uncover breaches of the Corporations Act and other laws; and
- the regulator investigates breaches and takes appropriate enforcement action to deter unlawful conduct.

Questions under the heading 'BUSINESS STRUCTURE' on page 342 of the Interim Report:

Do the events that have happened raise any issue about business structures? Do the events that have happened invite consideration of whether structural changes should now be made? Do the events that have happened suggest that manufacturers of financial products should

not be permitted to provide, whether by employee or authorised representative, personal financial advice in relation to products of a kind it manufactures?

The FSC submits that they do not. Indeed, Treasury has warned that any such structural separation would be complex and disruptive, and may have unintended consequences[23].

The main reason for the conduct revealed in the Hearings is not the particular structure financial providers have adopted, but the payment of remuneration or benefits which incentivised the wrong behaviour.

More particularly, do they provoke examination of how and to what extent conflicts of interest and duty arising from the structure of the business can be managed?

The FSC believes that the adoption of a vertically integrated business structure requires that the entity should more carefully consider its management of conflicts of interest. The FSC has detailed ways in which entities can do this under the heading *Methods to Manage Conflicts of Interest under Vertically Integrated Structures* in this submission.

Further, the FSC highlights the following initiatives which are underway or are proposed, which it considers will assist in the management of conflicts within the industry:

- new professional standards requirements for advisers – the higher education standards, in combination with adherence to FASEA's Code of Ethics for Financial Advisers, the FSC submits, will have the effect that new and existing advisers will themselves question inappropriate sales cultures and inappropriate practices within the industry;
- increased penalties and licensing requirements;
- the proposed design and distribution obligations in the *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Power) Bill* 2018 (Cth) (**DDO Bill**) DDO Bill; and External Dispute Resolution taskforce implementation.

We submit that the industry should be given time to implement and adapt to these reforms, given the substantial investment by industry and Government to enact them.

7. **Should an authorised representative be permitted to recommend a financial product manufactured or sold by the advice licensee (or a related entity of the licensee) with which the representative is associated?**

   – At all?

   – Only on written demonstration that the product is better for the client than comparable third party products?

In the FSC's view, a product recommendation should only be made after a consideration of the best interests of the client, and not a consideration of the ownership or contractual arrangements of the manufacturer. However, it is clear from the evidence given at the Hearings, that failure to comply with the best interests duty on the part of advisers was not uncommon. The FSC appreciates that, where an adviser recommends a product manufactured by an associated entity, instead of another product in circumstances where only that other product would satisfy the best interest duty, the adviser's interests are in conflict with the duty to the client, and the adviser is prioritising his/her interests over that duty to the client.

[23] Royal Commission Background Paper 24: Submission on key policy issues, Treasury, p. 40

FSC members already disclose to clients that, for life insurance products, they have an APL and the number of providers on that APL.[24] In an attempt to overcome the conflict of interest and duty, FSC members support a move towards:

- informing clients of the existence of an APL and the number of providers on the APL for products other than life insurance;
- when an AFSL holder recommends an in-house product:
  - clear disclosure of a comparison between the in-house product and other products in the Statement of Advice (**SOA**) to show why the in-house product is in the client's best interests; and
  - clearly informing the client that the recommended product is manufactured by an entity that is associated with the AFSL holder, together with a disclosure of any benefit the adviser and/or the AFSL holder will receive as a result of recommending the in-house product.

8. Should the grandfathered exceptions to the conflicted remuneration provisions now be changed?

– How far should they be changed?

– If they should be changed, when should the change or changes take effect?

The FSC supports:

- the ceasing of the grandfathering of conflicted remuneration payments (apart from payments made under the LIF grandfathering regime[25]) and, so far as is possible and practicable, issuers redirecting these payments to consumers; and
- the ceasing of the grandfathering of volume-based shelf space fees,

via legislated change.

We support the cessation of these payments as soon as practicable (to enable implementation). We recommend that there be consultation on this aspect.

The FSC would like to reinforce that it strongly supports the LIF Reforms and reiterates its comments in this regard in its submission in relation to the Round 6 Insurance Hearings, responding to policy question number 8.

9. Should the life risk exceptions to the conflicted remuneration provisions now be changed?

– How far should they be changed?

– If they should be changed, when should the change or changes take effect?

The FSC refers the Commission to its submission in relation to the Round 6 Insurance Hearings, responding to policy question number 8.

10. Should any part of the remuneration of financial advisers be dependent on value or volume of sales?

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[24] FSC Standard 24 Life Insurance Approved Product List Policy

[25] "LIF grandfathering regime" is a reference to the grandfathering regime that was introduced by the *Corporations Amendment (Life Insurance Remuneration Arrangements) Act* 2017 (Cth) and the *Corporations Amendment (Life Insurance Regulation Arrangements) Regulations (2017)* (Cth).

The FSC believes misaligned incentives can lead to inappropriate advice. Incentives should not be such that they would reasonably be expected to influence advice or products recommended.

In relation to life insurance, the FSC considers that commissions on life insurance should remain. Please see the submission responding to question 9. The FSC considers that the LIF Reforms will have the effect that the adviser cannot prioritise the adviser's interests over their duty to the client.

11. Should all financial advisers (including those who now act as authorised representatives of an advice licensee) be licensed by ASIC?

The FSC believes that the present licensing structure correctly addresses any perceived need for financial advisers to be licensed with ASIC.

From 1 January 2020, financial advisers have to comply with FASEA's Code of Ethics for Financial Advisers. Breach of this Code will result in the matter being investigated and, if required, disciplinary action imposed by the responsible Code Monitoring Body. This is similar to the role of the State and Territory Law Societies in disciplining legal practitioners. Further, the Code Monitoring Body will be obliged to report the matter to ASIC. ASIC will record this on the Financial Adviser Register and may take further disciplinary action against the adviser.

Professional organisations can apply to ASIC for approval as a Code Monitoring Body. All advisers will be required to subscribe to a Code Monitoring Body by 1 January 2020[26]. The FSC submits that the implementation of these new laws is effectively pushing the industry closer to a dual licensing environment. We understand that there is some impetus for dual-licensing (that is, both the existing AFSL holder and the individual adviser being licensed with ASIC). We do see the attraction of this approach in that the regulator would have at least nominal control and supervision over the conduct of advisers. However, this issue is complex, and we would therefore require further consultation on the effects of a formalised dual-licensing system in practice.

Further, the following FOFA reforms already import personal obligations in certain circumstances on the part of the financial adviser under Part 7.7A of the Corporations Act:

- best interest duty;
- ban on conflicted remuneration;
- obligation to provide an FDS;
- obligation to have customers opt-in every two years; and
- charging asset-based fees on borrowed amounts.

Breaches of these provisions give rise to a civil penalty, and ASIC is free to take action against the adviser personally.

We note that these obligations were already in place at the time the misconduct highlighted in the Hearings occurred.

The FSC is concerned, however, that if individual advisers only were licensed with ASIC (as opposed to the current model, or a dual-licensing model), instances of misconduct would be more common. This is because:

- ASIC's resources would be extremely stretched to oversee the behaviour of almost 25,000 financial advisers and undertake a sufficient level of enforcement activity to have a deterrent effect; and

[26] Corporations Act s961H

- the corporate licensee as principal is better positioned (in terms of resourcing, skills, knowledge and experience) to undertake much of the compliance on the adviser's behalf than is the individual adviser himself/herself. Ensuring compliance with Chapter 7 of the Corporations Act by virtue of creating and updating SOAs, Records of Advice, Financial Services Guides, FDS, and Renewal Notices; and implementing in a timely fashion amendments to that law, is an extremely onerous and time consuming task, one, the FSC submits, would be very difficult for an individual adviser to undertake on his/her own.

Further, under this model, customers would only have recourse to the adviser for remediation of losses resulting from inappropriate advice. As individual advisers would not have the depth of financial resources as corporate principal licensees have, customers would either be out of pocket or professional indemnity insurance for advisers would be virtually unaffordable. Already 51% of unpaid Financial Ombudsman Service (**FOS**) determinations stem from financial advisers.[27]

12. Are current product and interests disclosure requirements sufficient to allow customers to make fully informed choices?

See the submissions made under questions 2 – 6 as they relate to disclosure to customers.

13. Should the period after which a client must positively review an ongoing fee arrangement (OFA) be reduced from two years to one?

The FSC does not support the period within which a client must renew an ongoing fee arrangement (**OFA**) being reduced to one year.

The FSC does however submit that the opt-in requirements under section 962K of the Corporations Act should also apply to customers who obtained services from financial advisers before 1 July 2013. ASIC stated in *Report 499 Financial Advice: Fees for no service* that disclosure documents such as the FDS and Renewal Notices enabled clients and AFSL holders to discover instances of where fees were being charged without the provision of services, and that these provisions substantially reduced the likelihood of fee for no service issues re-occurring.

14. Should platform operators be permitted to deduct fees on behalf of licensees without the express authority of the client of the platform operator?

The FSC submits that platform operators should only be permitted to deduct fees on behalf of AFSL holders with express authority from the client. Many of the FSC's members already obtain such authority from their clients.

15. When an employee or authorised representative is terminated for fraud or other misconduct, should a licensee inform their clients of the reason for termination?

The FSC believes AFSL holders should inform clients of the reason for termination where:

- they have conducted an investigation of the conduct and have clear evidence that the conduct in question occurred; and
- the conduct amounts to a Serious Compliance Concern[28].

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[27] See FOS's Annual Review 2016-2017, p.31, available here: https://www.fos.org.au/custom/files/docs/fos-annual-review-20162017.pdf

[28] As defined in ASIC Report 515 Financial advice: Review of how large institutions oversee their advisers, paragraph 108

16. **When an employee or authorised representative is terminated for fraud or other misconduct, should a licensee review all the files or clients of that employee or intermediary for incidents of misconduct?**

    The FSC considers that, when an employee or authorised representative is terminated due to a Serious Compliance Concern which the AFSL holders considers may cause customer detriment, the AFSL holder should review all files of active clients for whom the employee or authorised representative gave advice as soon as possible to determine the breadth of the misconduct.

17. **Should negotiation and settlement be the main approach for a regulator?**

18. **Should there be greater focus on general deterrence in regulatory strategy?**

19. **Should a component of enforceable undertakings be the acknowledgment of specific wrongs?**

20. **Should self-reported breaches of the Corporations Act generally attract legal sanctions unless some special circumstances exist?**

21. **Should banning orders continue to be preferred to civil penalty proceedings in case of licensee/adviser misconduct?**

22. **Should ASIC make more use of its Section 916G power to give a licensee information about a person who is or will be a representative of the licensee?**

    The FSC supports ASIC's use of its powers under section 961G to provide an AFSL holder with information regarding an adviser that the AFSL holder is considering authorising. The industry would welcome consulting with ASIC on this issue.

23. **Does Section 916G need to be amended so as to be more effective?**

24. **Should there be more focus on criminal proceedings against licensees rather than individual advisers?**

    The FSC has chosen not to make separate detailed submissions on questions 17 – 21, and 24, but we do make the following more general comments. The Interim Report indicates that regulator action or inaction has played a not insignificant part in the creation of the current environment. Much criticism has been levelled at ASIC because it has reached negotiated positions with certain financial service entities, instead of commencing civil proceedings. The FSC welcomes regulatory certainty. Much certainty has been lacking on some issues, for instance the division between general and personal financial product advice. The FSC also recognises the importance of having an appropriately resourced regulator in each area of the financial services industry, with appropriately skilled staff to ensure the industry is monitored effectively.

    Apart from changes specifically suggested in this submission, it considers ASIC already has the regulatory toolkit to take more enforcement action which should prove a deterrent from bad behaviour.

2. RESPONSE TO OTHER QUESTIONS ASKED IN THE INTERIM REPORT

ADD-ON INSURANCE QUESTIONS (Page 329)

Are certain types of add-on insurance, by their nature, poor value propositions for customers?

In our view it would not be appropriate to legislate for an outright prohibition on any particular class of product. For some consumers the product may be appropriate (depending on the consumer's circumstances and the product design), and an outright prohibition (for all consumers) will mean consumers for whom the product is appropriate will then not have access to that product.

The proposed design and distribution regime under the DDO Bill should ensure that there is a legislative framework under which products are designed for and distributed to an appropriate target market. The DDO Bill has been introduced into the House of Representatives. It has been referred to the Senate Economics Legislation Committee and submissions were due to that Committee by 18 October. The FSC previously made submissions on the Bill to Treasury and has made a submission to the Committee. Currently, the Bill is drafted so that the Bill commences 24 months after the Bill receives Royal Assent.

The intent of the DDO Bill is to ensure that financial products are only marketed to the appropriate market in order to improve consumer outcomes. It does this by:

- requiring issuers to have in place a documented "Target Market Determination" (**TMD**) before marketing/distributing their products;
- obliging issuers to develop review protocols to ensure that their products are only marketed and distributed in accordance with the TMD; and
- if products are marketed and distributed outside the TMD, obliging the issuer to remove the product from the market until the issue is rectified.

Both issuers and those involved in distributing products will need to comply with the underlying TMD and ensure that the products are only aimed at the target market. Issuers will need to monitor distributors' compliance with these new requirements.

The FSC considers that the DDO Bill should significantly reduce the occasions on which products are distributed to customers who will receive little or no value from them.

Further, ASIC, under complementary rules, will have a product intervention power which it can use when there is a risk of significant consumer detriment. This power should be sufficient to ensure that appropriate consumer protections are in place if an inappropriate or harmful product nevertheless enters the market.

FUNERAL INSURANCE QUESTIONS (Pages 338 – 339)

In this part of our submission, we address relevant questions raised by the Commission in relation to funeral insurance and funeral expenses insurance.

We emphasise that the comments we make here should not be given a broader application or thought to be applicable to other insurance products as a matter of universal principle.

Funeral insurance (and funeral expenses insurance) are specific and particular types of products designed to meet and provide cover for specific events and circumstances. It would not be appropriate to apply our observations to other more "general" types of products such as term life insurance or TPD cover.

1. *Are funeral policies, or particular kinds of funeral policy, financial products warranting intervention by ASIC in the exercise of its product intervention powers?*

We welcome the Government's introduction of ASIC Product Intervention Powers which will apply to all financial products (apart from some exceptions such as MySuper products) as well as the DDO obligations. In answering this question, consideration is required of issuer obligations (under the DDO) as well as ASIC's Product Intervention Powers.

Issuers of financial products will be subject to DDO obligations. Issuers should design and distribute products which are consistent with good consumer outcomes. The DDO Bill supports these outcomes.

Where a product issuer, notwithstanding the DDO, does not design a product which supports good consumer outcomes, then ASIC should consider exercising its product intervention powers where there is significant consumer harm. Whether a product or feature is appropriate for ASIC intervention or otherwise will be a function of the product design features offered by each issuer of funeral policies.

Funeral insurance is a valuable product for a particular customer segment.

To further improve consumer outcomes in respect of funeral insurance, we propose (or note) the following:

(a) The DDO Bill will ensure funeral insurance products are only marketed to customers in the TMD; and

(b) The next iteration of the Life Code (**Version 2**) is being developed and our intention is that, to further promote good consumer outcomes, the following features apply to funeral insurance.

- Stepped premiums result in funeral insurance becoming more expensive as the insured ages. Affordability and sustainability issues are more likely to arise with stepped premiums for older age cohorts, a key demographic for funeral insurance. Accordingly, good consumer outcomes in our view require that stepped premiums funeral insurance products no longer be made available for sale.

- funeral insurance policies should not be sold to persons under 25;
- insurers should not knowingly promote funeral insurance to groups of people under the age of 40 and, in general marketing campaigns, should explain the characteristics (such as the ages) of the people for whom the policy is designed; Sales of funeral insurance to persons between 25 and 39 (**25-39 Customer**) should be accompanied by a warning that other life insurance might be more appropriate for such age cohort depending on the terms of the other life insurance cover, the health status and the lifestyle of the 25-39 Customer, and the individual objectives, financial situation or needs of the 25-39 Customer. A sample warning such as that described below could be developed:

- *Other forms of life insurance (besides funeral insurance) are generally available which, for 25-39 Customers generally, may be more appropriate than funeral insurance for persons in such age-group depending on the terms of the other life insurance cover, the health status and the lifestyle of the 25-39 Customer, and the individual objectives, financial situation or needs of the 25-39 Customer. However, this general information does not of course consider your own individual circumstances, objectives, financial situation or needs, which the 25-39 Customer should consider before making a decision in relation to any form of life insurance*.

- insurers be prohibited from providing a period of free (i.e. no) or a notional premium in excess of three months (this is often referred to as "freemiums") as it may not be conducive to long term sustainability for the consumer (who may receive a premium bill well after the sale of the policy).

- where funeral insurance is issued with no or notional premiums for longer than one month ("freemiums"), insurers be required to:

  - inform customers before the policy starts of the amount of the full premium;

  - give the customers between 10 to 20 business days' notice before they collect the first premium, and

  - remind customers about the cooling off period, which should apply from when the policy starts until at least 30 days after the first full premium is paid.

2. *Should all forms of funeral insurance be financial products for the purposes of Chapter 7 of the Corporations Act 2001 (Cth)?*

   Yes, funeral insurance should be treated consistently with other forms of insurance

3. *Should all forms of funeral insurance be covered by Part 2 Division 2 of the Australian Securities and Investments Commission Act 2001 (Cth)?*

   Yes, funeral insurance should be treated consistently with other forms of insurance.

4. *Should it be unlawful to sell funeral insurance for persons under 18 years?*

   We propose that it should be unlawful to sell funeral insurance to persons under 25 years of age.

   This is consistent with the age for removal of default life insurance cover in superannuation as proposed in the Government's *Protecting Your Super* package.

   We further propose that funeral insurance should not be knowingly marketed or promoted to customers under the age of 40. Where a customer under the age of 40 (and who is 25 or older) insists on the purchase of a funeral insurance policy, the funeral insurance product should be provided on an exception basis, and the (25-39 year old) customer should be alerted that the product may not be the most appropriate product for persons less than 40 years of age, that there may be more suitable life insurance products available depending on the terms of the other life

insurance cover, the health status and the lifestyle of the 25-39 Customer, and the individual objectives, financial situation or needs of the 25-39 Customer.

REGULATION AND THE REGULATORS (Pages 339 – 340)

1. *Is the law governing financial services entities and their conduct too complicated?*

    - *Does it impede effective conduct risk management?*

    - *Does it impede effective regulatory enforcement?*

It is axiomatic that the law governing financial services entities is complicated. That law is a mixture of statutory regulations, such as the Corporations Act and Regulations, and the *Superannuation Industry (Supervision) Act* 1993 (Cth) (**SIS**) and, various general law principles such as fiduciary obligations. That law is necessarily complicated and complex because of the nature of the issues involved and the outcomes sought to be achieved. The FSC does not accept however that the law relevant to the conduct of financial services entities is too complicated. Generally, where relevant, the law is expressed on a "principles basis" rather than on a prescriptive and detailed basis. This has the advantage that relevant circumstances can be measured against a general yardstick and accommodates particular and differing circumstances which can arise.

For example, section 912A of the Corporations Act details the general obligations of a financial services licensee. For the purposes of this submission, the FSC will not repeat these general obligations in detail. However, as the Commission would be aware, a licensee, amongst other things:

(a) must do all things necessary to ensure that the financial services covered by the license are provided efficiently, honestly and fairly;

(b) must have in place adequate arrangements for the management of conflicts of interest that may arise wholly, or partially, in relation to activities undertaken by the licensee or a representative of the licensee in the provision of financial services as part of the financial services business of the licensee or the representative;

(c) subject to exceptions for certain APRA-regulated bodies and RSE licensees, a licensee must have adequate risk management systems.

To the extent to which a licensee is a fiduciary then under general law, the licensee will be subject to a number of general law obligations, including the obligation to act in the interests of the beneficiary and to act honestly in the exercise of its powers. Further, officers and employees of a corporate licensee, have various general law duties, such as a duty to act in good faith and to exercise appropriate care, skill and diligence. There also are various statutory duties and powers imposed upon officers and employees under Part 2D.1 of Chapter 2D of the Corporations Act.

A financial adviser has general law obligations, including fiduciary obligations and an obligation to exercise reasonable care in the provision of advice. This is reflected in section 961B of the Corporations Act which imposes an obligation or duty that the provider must act in the best interests of the client in relation to the advice.

In relation to Registrable Superannuation Entities (**RSEs**) and RSE licensees, as trustees, they and their officers are subject to well-known and well-defined general law obligations. For example, a superannuation or pension trustee must act in the best interests of its beneficiaries. Its officers and

employees must not participate in or be party to breaches of trust. In addition, under SIS, certain trust law duties and obligations are codified as covenants by an RSE. If the governing rules of an RSE do not contain covenants to the effect of those set out in section 52(2) of the SIS, then the governing rules are deemed to contain covenants to that effect. Again, we will not traverse all of these covenants for the purposes of this submission. However, in this context, they focus on matters such as:

(a) a covenant to act honestly;

(b) a covenant to exercise a prescribed degree of care, skill and diligence;

(c) a covenant to perform the trustee's duties and exercise the trustee's powers in the best interests of the beneficiaries;

(d) a covenant in relation to conflicts including obligations to give priority to interests of beneficiaries and compliance with APRA prudential standards; and

(e) covenants of fairness, i.e., to act fairly in dealing with classes of beneficiary and to act fairly in dealing with beneficiaries within a class.

Similarly, Section 52A(2) of the SIS clarifies the duties that apply to individuals who are directors of corporate trustees of RSEs, by reflecting many of the covenants in s 52(2). Again, to the extent to which the covenants are not contained in the governing rules, the rules are taken to contain the covenants, focusing on the individuals who are directors of the corporate trustee of the RSE (section 52A(1)). A covenant referred to in section 52A(2) operates as if the director were a party to the governing rules.

In these circumstances, the FSC does not accept that the law governing financial services entities and their conduct is too complicated. The law proceeds by reference to relevant principles which can be applied in a variety of circumstances. It follows in the FSC's view that the law impedes neither effective conduct risk management nor effective regulatory enforcement.

In the FSC's view, the more pertinent issues are whether there is sufficient focus in entities on effective conduct risk management and whether there are sufficient and appropriate resources in regulators to focus on such issues. The FSC would welcome further debate and consideration of these issues in conjunction with regulators and all stakeholders.

The regulatory regime in relation to conduct at least is not too complex. Accordingly, we do not believe there is any necessity for radical simplification of the regulatory regime. As the FSC has said, it does believe that greater industry and regulatory debate and focus on these issues ultimately would be beneficial. The FSC would support however, greater cooperation between ASIC and APRA in relation to various matters and, in particular, conduct matters. The FSC would support an appropriately resourced regulator in each area, with staff having the appropriate skills to ensure the industry is monitored effectively.

2 *Is the regulatory regime too complex? Should there be radical simplification of the regulatory regime?*

It follows from the FSC's answer to question 1 above that the FSC does not believe the regulatory regime is too complex. Accordingly, the FSC does not believe there is any necessity for radical simplification of the regulatory regime. As the FSC has said, it does believe that greater industry and

regulatory debate and focus on these issues ultimately would be beneficial. The FSC would support however, greater cooperation between ASIC and APRA in relation to various matters and, in particular, conduct matters. The FSC supports an appropriately resourced regulator in each area, with staff having the appropriate skills to ensure the industry is monitored effectively.

3 *Should industry codes relating to the provision of financial services, such as the 2019 Banking Code of Practice, be recognised and applied by legislation like Part IVB of the Competition and Consumer Act 2010 (Cth)?*

At this stage, the FSC does not have a concluded view on whether industry codes should be recognised and approved by legislation such as Part IVB of the *Competition and Consumer Act* 2010 (Cth), (**Act**) although it can see merit in this approach. Consideration would need to be given to the advantages and disadvantages of such an approach. The FSC appreciates that a breach of an applicable code under Part IVB is a contravention of the Act and this may give rise to an ability in the ACCC to act in respect of that breach. However, questions which do need to be considered include whether there is potentially more consumer benefit in a code not being subject to that Act. If a code is otherwise enforceable by consumers, then there may be more benefit in retaining the status quo. For example, the FSC's Life Insurance Code of Practice (**Life Code**) contemplates that consumers may complain to an External Dispute Resolution (**EDR**) body or to the Life Code Compliance Committee in respect of breaches of the Life Code. There are avenues available here to ensure that any wrong is compensated or rectified. These methods involve no cost to the consumer and should provide a less formal and less legalistic approach than pursuing the matter otherwise by way of court action or complaint to the ACCC. In addition, there is a flexibility issue. As the FSC understands it, applicable codes under Part IVB of the Act are made by way of regulation (presumably following liaison with the ACCC). In theory, an industry code may be amended if need be to address emerging issues more quickly and effectively than amendment by way of regulation. Thus, in summary, the FSC would need to consider issues such as these before arriving at a final and concluded position.

The BEAR (Page 341)

Is the Banking Executive Accountability Regime ('the BEAR') relevant to the intersections between remuneration and culture more generally than in its application to particular senior executives?

- *.....*
- *Should the BEAR be extended in application?*

The BEAR is specific legislation directed to Authorised Deposit-taking Institutions (**ADIs**) and the relevant group of bodies corporate that are constituted by the ADI and its subsidiaries. There is sufficient regulation of non-ADI group entities under the Corporations Act and entity-specific legislation such as SIS, APRA standards (on remuneration), and duties of Australian financial services licensees (including conflicts management) without imposing a further additional layer of complexity. However, we understand the policy arguments in favour of this issue, and we are happy to consult with Government on this point.

BUSINESS STRUCTURES (Page 342)

1. *Do the events that have happened raise any issues about business structures?*
2. *Do the events that have happened invite consideration of whether structural changes should now be made?*

3. *Do the events that have happened suggest that manufacturers of financial products should not be permitted to provide, whether by employee or authorised representative, personal financial advice in relation to products of a kind it manufacturers?*

4. *More particularly, do they provoke examination of how and to what extent conflict of interest and duty arising from the structure of the business can be managed?*

Please see pages 9 – 10 of this submission.

INTERMEDIARIES (Pages 343 – 344)

1. *For whom do the different kinds of intermediaries act?*

    - *Financial advisers*

2. *For whom should each kind of intermediary act?*

    Financial advisers do and should act in the interests of consumers. The interests of consumers should always come first. The vast majority of financial advisers do put their customers first; however, as has been revealed through the Financial Advice Hearings, there have been instances of advisers putting their own interests or those of their employer or licensee first. The FSC considers one of the causes of this behaviour is misaligned incentives. It details its views on this under its responses to questions 3 – 6 under the heading Financial Advice.

3. *If intermediaries act for the consumer of a financial service*

    - *What duty do they now owe the consumer?*
    - *What duty should they owe?*

    Relevantly, financial advisers owe to the following duties to their customers:

    - An adviser must act in the best interests of the customer; and
    - An adviser must give priority to the customers' interests.

    This follows both from Section 961A of the Corporations Act and we suggest the general law of fiduciary obligations.

    The FSC considers that these duties are sufficient to ensure that customers' needs are prioritised and customers receive appropriate advice. The FSC believes that instances of advisers failing these duties, as the Commission uncovered in the Financial Advice Hearings, was not due to insufficient or unclear duties being placed on advisers, but due to the fact that these duties had not been adequately carried out, and/or have not been adequately enforced against either advisers or licensees, in some instances.

4. *Are external dispute resolution mechanisms satisfactory?*

    The FSC believes the existing EDR mechanisms are satisfactory. The new AFCA regime ought to be given time to settle in and the Superannuation Complaints Tribunal wound down as contemplated.

These mechanisms provide a useful and low or nil cost mechanism for consumers as an alternative to formal legal action.

5. *Should there be a mechanism for compensation scheme of last resort?*

Previously, the FSC has expressed its views, in submissions dated 2 February 2017 and 1 July 2017 respectively to Treasury. These submissions are not repeated in detail here for current purposes. The FSC would be happy to provide these submissions if required.

Nevertheless, to assist the Commission, the FSC makes the following comments:-

(a) we do not agree with the Ramsay Review supplementary report that an industry funded, 'limited and carefully targeted' compensation scheme of last resort (**CSLR**) for the financial sector should be established, initially limited to financial advice failures. In addition, for the reasons mentioned in the above submissions and below, if introduced, the CSLR should not be extended to other financial products and services;

(b) If the concept of a CSLR is accepted, the scheme should not be introduced at least until such time as the recommendations in the earlier St John Report[29] have been reviewed and measures introduced to address the issues that lead to licensees being unable to meet their consumer compensation obligations. Following implementation of the revised arrangements, they need to be given an appropriate time to "work through" the financial sector to see if there then is an imperative for a CSLR;

(c) Prior to the introduction of a CSLR, the current reforms in progress to improve the competence and professionalism of advisers should be fully implemented and changes to the legislative breach reporting framework should be made to encourage and assist licensees to report and deal with "bad apples" and an assessment then made as to whether the necessity for such a scheme exists;

(d) Moreover, the economic and industry specific implications of even a limited CSLR do need to be given serious consideration having regard to the Cadence Economics Report the FSC referred to in its earlier submissions. This demonstrated the high cost of introduction of such schemes. As a result, ultimately a significant proportion of these costs would be borne by consumers and investors in the financial services industry;

(e) There are legacy issues involved - the report states that there *is a strong case for payment of legacy unpaid EDR determinations* but notes that there are a number of challenges associated with doing so, chief among which is funding. On this basis the report states that the Government should identify a funding source to address legacy unpaid determinations. Based on this, the CSLR has the very real potential to be retrospective in nature. It is neither good policy nor equitable to enforce retrospective policy on the advice industry for the failings of other advisers. Thus, in the FSC's view, there is the prospect of the scheme having to address not only current FOS unpaid determinations but also future determinations relating to events that may date back a number of years. As the FSC understands it, modelling does not appear to have been undertaken to determine the size of the liabilities relating to this 'tail';

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[29] Richard St John – *Compensation Arrangements for Consumers of Financial Services*:2012

(f) A CSLR inherently promotes moral hazard – for instance smaller, less-capitalised licensees could adopt less risk-adverse approaches and behaviours in the expectation that if something goes wrong, the scheme will "pick up the tab";

(g) The FSC does agree with the following aspects of the report in relation to initial, limited CSLR proposed, **if** that were to be introduced-

(i) the CLSR should initially be restricted to financial advice failures;

(ii) the CSLR should apply to unpaid EDR determinations, court judgments and tribunal awards which are made after a CSLR is established i.e. only unpaid decisions which arise after a CSLR is established should be eligible for compensation;

(iii) eligibility to lodge a claim should be restricted to consumers and small businesses as defined by AFCA;

(iv) the CSLR should not independently reassess the merits of claims which it receives;

(v) consumers and small businesses must have a decision from AFCA, a court or a tribunal which remains unpaid after reasonable steps as defined by the CSLR have been taken, before being able to access the CSLR;

(vi) a cap should apply to the level of compensation that a CSLR is able to provide. The compensation cap should be subject to periodic review, to ensure it remains fit for purpose and that a CSLR remains financially sustainable. A CSLR should set limits on the level and types of legal costs that are recoverable;

(vii) ASIC should have oversight of a CSLR to ensure it is fulfilling its objectives similar to the role ASIC will undertake in respect of AFCA. The CSLR should be governed by an independent board with an independent chair and equal numbers of directors with industry and consumer backgrounds consistent with the AFCA model. Financial firms providing the types of financial services covered by the CSLR should be required to be members and contribute to the funding of a CSLR as a condition of licensing; and

(viii) licensees that rely on PI insurance to meet their licensing obligations should be required to provide additional data to ASIC to improve ASIC's ability to undertake market surveillance and targeted regulatory action.

CAUSES (Page 345)

- *What were the causes of the conduct identified and criticised in this report?*

  Conflict of interest and duty?

  Remuneration structures?

  Culture and governance?

  Regulatory response?

Each of the factors referred to in the report, in one way or another, are likely to have caused the conduct which the report has identified and criticised. Please see the FSC's responses to the

questions under Financial Advice where it indicates that it considers that remuneration structures have contributed to the misconduct highlighted in the Financial Advice Hearings.

Going forward, the FSC would anticipate that measures the Commission has identified as a potential response to these issues should be adopted.

RESPONSES (Pages 345 – 346)

1. *What responses should be made to the conduct identified and criticised in this report?*

2. *Are changes in law necessary?*

    a. *Should the financial services law be simplified?*

    b. *Should carve outs and exceptions be reduced or eliminated? In particular, should*

        i. *Grandfathered commissions*

        ii. *…*

        iii. *Funeral insurance exceptions*

    be reduced or eliminated?

The FSC has chosen not to make separate detailed submissions on questions 1 and 2 under Responses, save to say as follows. There may well be aspects of the law which could be simplified. However, the nature of those proposed changes and the potential impact would need to be considered and analysed. Generally, as the FSC has said, the law governing financial services can be complex, given the nature of the industry. However, the fundamental principles applicable to conduct and behaviours are broadly expressed; for example, the duties of superannuation trustees and other fiduciaries. In the FSC's view, this is appropriate as such principles need to be expressed broadly to cover the wide range of circumstances which could arise.

Regarding the FSC's position on grandfathered commissions, please see its response to question 8 under the heading Financial Advice.

Regarding our position on funeral insurance, please see our responses to the questions under the heading Funeral Insurance Questions.

3. *What is the proper place for industry codes of conduct?*

    a. *Should industry codes of practice like the 2019 Banking Code of Practice be given legislative recognition and application?*

Please see the FSC's response to question 3 under the heading Regulation and the Regulators.