Submission to the Parliamentary Joint Committee on Corporations and Financial Services

INQUIRY INTO PROPOSALS TO LIFT THE PROFESSIONAL, ETHICAL AND EDUCATION STANDARDS IN THE FINANCIAL SERVICES INDUSTRY

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1 EXECUTIVE SUMMARY

1.1 Context

As we have noted in previous submissions to this Committee, there is a lot to recommend in the current financial advisory system; a fact that is often overlooked by consumer groups and other policy influencers. As with every system, however, there are opportunities to further improve particular aspects in order to better serve the interests of the majority of consumers.

The other critical point about "change" in this industry is that it needs to be made via measured and infrequent interventions. When dealing with legislation and regulations impacting people's retirement savings it is imperative that it be undertaken in a manner that enhances (rather than undermines) people's confidence in the system.

It is our perception that the issues of financial advice and superannuation are becoming overly politicised, and knee-jerk decisions are being made at all levels in the industry without proper regard to consequences and without a clear line of sight on the best interests of the client.

With regard to the Committee's current terms of reference, there is a lack of clarity about exactly what problem "is being solved for". Some have suggested that higher educational standards will reduce the occurrence of fraudulent behaviour amongst planners (a link we would argue is contentious), so we assume that a nexus is being drawn between adviser education and the quality of advice. Again, however, we remain to be convinced about the strength of the correlation between these two things.

Our views, based on over fifty years of combined experience in the financial services industry, are summarised below:

1.2 Adviser Education

The ability of an adviser to deliver quality advice outcomes to his or her clients is a function of many variables. Education is one such variable, however, we would argue that experience is more important in driving quality outcomes. Moreover, there are different forms of education and rather than focusing on tertiary qualification as an end in themselves, we believe more emphasis needs to be placed on continuing professional development. Accordingly,

- We do **not** support any move to retrospectively mandate tertiary qualifications for financial advisers. Theoretical studies are often a poor substitute for practical experience.
- Based on our experiences, a **diploma** in Financial Planning (or equivalent) provides a planner with the technical knowledge necessary to commence a career in financial planning
- We believe that some of the current PS146 training is **deficient** - particularly where it involves emersion or intensive style training over a period of only one or two weeks.
- The issue with any qualification is that it involves study at only one particular point in time. The legislative and regulatory framework in our industry is changing (all to) frequently and we believe that the key to delivering quality advice is **continuing professional development**.
- It would seem, based on recent events, that there is a greater case to be made for the appropriate **education and training of senior management** and/or **responsible officers** within large financial advice companies rather than advisers.
- The key to ensuring that quality advice is consistently delivered (in any sized organisation) is a set of robust systems and processes. Senior management and Responsible Officers need to be held **personally accountable** for the success or otherwise of the overarching checks and balances in a planning business.

1.3 Professional Standards

"What then is the relation of law to morality? Law cannot prescribe morality"

R.M. MacIver (1882–1970)

Codes of conduct typically entail notions of ethical or moral responsibilities and for this reason, they can not readily be the subject of regulation. Specific behaviours, however, can be and in this regard there are already significant obligations imposed on the profession by way of Corporations law.

There are, however, "collateral" benefits in having the activities of a profession governed by a Code of Practice. Hence,

- We support the adoption of a **uniform Code of Professional Practice** for all financial planners.
- We believe such a Code should be developed and maintained by **ASIC** (or more appropriately, an independently constituted panel).
- We would envisage that as part of any proposed registration process, Financial Planners would be required to endorse (annually) an agreed Code of Professional Conduct.

1.4 Recognition of Professional Bodies by ASIC

"Picking winners" is something that should be left to punters not bureaucrats or politicians. There would appear to be a level of moral hazard if ASIC is seen to be anointing particular professional bodies, particularly if this is done at the exclusion of other bodies or groups in the industry. Therefore,

- We would **not** recommend the practice of ASIC formally recognising professional bodies (particularly where there are multiple groups representing different interests within an industry).
- There may well be a role for an **independently constituted panel** (similar to the tax practitioners board) to oversight the registration and related management of planners.

2 Adviser Education

Clearly, there needs to be some form of minimum "entry level" qualification required to practice financial planning. We believe that a diploma level qualification in financial planning is sufficient to enable a person to commence a career in financial planning

So far as tertiary degrees are concerned, we would note that they are not the panacea for all evils as some are holding them out to be. Some of the issues we see in simply stipulating a requirement for a (relevant) tertiary degree are that:

- A degree's content can be quite theoretical and provide little insight into the technical approaches and skills required to successfully undertake a particular role.
- As senior executives recruiting in the financial services industry, we viewed tertiary qualifications as an indication that a candidate was able to apply himself or herself, and had reasonable organisational skills. It did not speak to an individual's competency or emotional intelligence.
- Even where a commercially relevant degree is undertaken (eg Bachelor of Commerce, Bachelor of Business Administration, Bachelor of Applied Finance, etc) the amount of exposure to specifically relevant subject matter (ie core subjects) can be surprisingly low. A student can spend most of their tertiary years studying subjects other than those directly related to their stated major.
- Practical experience (particularly that gained over a number of years) is far more valuable than any tertiary degree in delivering quality financial advice.

We don't believe that a tertiary degree should be a mandatory pre-requisite – not for new candidates and certainly **not for existing** advisers.

We would observe that there are many very successful business people who do not hold qualifications. The Boards of some of the largest companies in Australia (including Telstra and the Commonwealth Bank) are occupied by individuals who have risen to lofty heights in corporate Australia off the back of on the job training and continuing professional development (ie without formal qualifications).

Indeed, within the 43rd Parliament of Australia close to twenty percent of MPs do not hold **any form** of post-secondary qualification. The number who hold tertiary degrees (or higher) is estimated to be around sixty five percent. Do we need to consider retrospectively imposing qualification standards on politicians to improve the quality of political outcomes in this country?

As to the question of ethics and any correlation with education levels, we only have to look at recent political history in the nations capital to note that both Craig Thompson and Peter Slipper held multiple tertiary degrees (both had legal degrees amongst other qualifications) to appreciate that even the best educated individuals are capable of perpetrating fraud.

We are also not fans of qualification by acronym – that is, the professional credentials (eg CPA, CFP, etc) marketed by particular industry groups. These can be self-serving (providing significant revenue to the associations involved) and subject to historic vagary. For example, CFP and CPA memberships were historically "handed-out" after satisfying a minimum work experience period. Over more recent years, a more comprehensive course outline has been developed to underpin these professional standards, however, no attempt was made to retrospectively raise the bar (ie those that had the qualification were able to retain the credentials – provided of course that they paid the requisite annual fee).

Generally, the associations are responsible for determining, administering and delivering the content of the qualifications in question resulting in significant financial benefit for themselves. The more widespread the acceptance of their professional credentials, the more profitable it is for them.

One needs to be cautious of calls from industry bodies for more education of planners when a core part of their business model is the sale of education services into the planner body. There is a potential conflict of interest at play when adoption of the recommended course of action leads to more dollars in the door for the industry group concerned.

Industry associations should restrict themselves to advocacy-related responsibilities and not seek to develop commercial interests (such as those related to the provision of educational services).

We believe that the current fixation on up-front qualifications needs to shift to a debate about the most appropriate form of **continuing professional development**, particularly in a constantly changing industry such as ours.

Currently, in the financial planning industry, much of this type of on-going education is delivered (quite successfully) by Kaplan Education Pty Ltd. This involves the designation of a prescribed number of professional hours per year, allocated across development areas (ie a training plan) and administered by a system that tracks successful completion of online and face-to-face training. The system also delivers educational content (in satisfaction of professional hours) by way of online articles and exams.
There are some enhancements that could be made to the current system (including, for example, to the nature of content and the examination process),

however, by and large, this type of framework seems to work particularly well in ensuring that planners technical knowledge remains up to date.

One area that we believe requires some level of scrutiny is the qualification, experience and competency of senior management and Responsible Officers in oversighting financial planning practices. These individuals are responsible (but rarely held to account) for designing and managing the organisational structures and processes in planning businesses. If properly designed, these systems should quickly flush out the behaviours of a single rogue or poorly trained planner. The consequences of systemic failure (which point to poorly designed and managed systems) are all too obvious in current case studies involving the CBA and Macquarie Wealth.

3 Professional Standards

"What then is the relation of law to morality? Law cannot prescribe morality"
R.M. MacIver (1882–1970)

Seeking to regulate morality by way of "black leather law" is largely futile – at the very least inefficient in terms of cost and effort. No matter how well educated or regulated an industry may be, a very small minority will always act inappropriately. The trick is to design systems that identify this type of behaviour before it becomes widespread (systemic), that provides adequate & just compensation for those wronged and punishment for the perpetrator.

Codes of conduct provide behavioural guidelines and ninety nine percent of professionals would engage in the expected behaviour without reference to, or need for, the code. (It has actually been our experience that where Codes have been developed in various parts of the financial service industry historically, that they have been drafted merely as a statement of existing practice.) And again, for those who would seek to further their own interests at the cost of their clients, the Code will provide little deterrent.

At best, a Code has the potential to provide some direction for those who might otherwise struggle with any "grey areas" associated with expected behaviour. The existence of a Code may also go some way to enhancing the perception of credibility around the advice industry in the eyes of the consumer. Finally, a Code may provide a reference point for clients seeking to know whether or not their adviser has acted in their best interests.

Assuming that ASIC creates a register of financial planners, then as part of the registration process, planners could be required to endorse any relevant code of conduct. The registration process may also involve certification of minimum professional training hours and the like.

What should be regulated are the arrangements and behaviours that give rise to potential conflicts. Focus should be on things such as:

- front-loaded insurance commissions,
- product-aligned licensees,
- all forms of dealer group sponsorship,
- volume rebates, etc

4 Recognition of Professional Bodies by ASIC

"Picking winners" is something that should be left to punters not bureaucrats or politicians. There would appear to be a level of moral hazard involved in ASIC seeking to anoint particular professional bodies, particularly if this is done to the exclusion of other bodies or groups in the industry.

The "business" of professional bodies revolves around credibility and membership numbers – any endorsement by ASIC would no doubt add significantly to the bottom-line of the groups in question. It has been our experience that, despite their articulations, some bodies do not adequately represent the breadth of interests within an industry or, as is often the case, they may put forward views that purport to be representative, but in reality they reflect the self interest of the professional body.

We do not support ASIC providing recognition of professional bodies.

However, there could well be a role for an **independently constituted panel** (similar to the tax practitioners board) to oversight the registration and related management of planners.