



Our ref: Law reform – 2015 Parliamentary Joint Committee – financial advisers

7 May 2015

Financial Services Unit
Financial System and Services Division
Markets Group
The Treasury
Langton Crescent
PARKES ACT 2600

By Email only: ProfessionalStandards@treasury.gov.au

Dear Sirs or Mesdames,

**Parliamentary Joint Committee on Corporations and Financial Services
Consultation on recommendations of the inquiry into proposals to lift the
professional, ethical and education standards in the financial services industry**

Consumer Credit Legal Service (WA) Inc. (**CCLSWA**) is pleased to participate in a consultation on the core elements of the Parliamentary Joint Committee's (**PJC**) comprehensive model to lift the professional, ethical and education standards in the financial services industry (**model**).

Summary

We refer to our submission dated 5 September 2014 on the PJC's Inquiry into proposals to lift the professional, ethical and education standards in the financial services industry.

CCLSWA is a not-for-profit community legal centre specialising in consumer credit law and the Australian Consumer Law. CCLSWA regularly receives calls for assistance from consumers who are in financial difficulty due to acting on the advice of their financial adviser. Usually the financial adviser negotiated and arranged home loans or other financial loan facilities on behalf of the consumers with credit providers.

Our view is that the law should impose more stringent regulations on financial advisers in the financial services industry. The proposed PJC model is a comprehensive regulatory regime for the financial services industry which addresses a number of the concerns raised in our previous submission.

If implemented, the PJC model represents a substantial change from the current regulatory environment. In this regard, we make the following submissions below, referring to the PJC's March 2015 consultation paper and terms of reference.

Education and training

As previously submitted, we are of the view that the current qualifications required of financial advisers are manifestly inadequate.

Consumer Credit Legal Service (WA) Inc
Level 1, 231 Adelaide Terrace, Perth WA 6000
Phone (08) 9221 7066 Fax (08) 9221 7088
Email info@cclswa.org.au
www.cclswa.org.au

ABN 43 262 474 001

Recommendation 7 - Minimum education standards

CCLSWA encourages the implementation of Recommendation 7.

We are aware that a number of financial institutions have recently voluntarily announced that they intend to increase the educational standards of their future financial advisers. Such action is positive; however it is necessary for a coordinated national approach to achieve fairness, uniformity and transparency.

A bachelor degree is the minimum level of education for numerous professions in Australia. CCLSWA supports the PJC's Recommendation 7 that the mandatory minimum educational standard for financial advisers should be increased to a degree qualification. This will bring the profession of financial advisers in line with other professions such as doctors, lawyers and accountants. It is also in line with consumers' expectations of professional financial advisers.

We would expect new financial advisers to hold as a minimum, a relevant bachelor degree, in which they have studied subjects that meet core knowledge areas as set by the Financial Professionals' Education Council (**FPEC**). Those who have not studied subjects covering core knowledge areas should be required to undertake further study such as conversion or bridging courses.

Recommendation 8 - Professional year and registration examination

CCLWSWA encourages the implementation of Recommendation 8 but suggests that further measures are needed to ensure competency of the financial adviser.

The PJC has recommended that new advisers undertake a structured professional year complemented by an examination, conducted at the end of the professional year as a way for new advisers to develop on-the-job skills.

The PJC model then binds the successful completion of this examination and professional year to the registration process.

In our view, the completion of a professional year and passing the examination are steps that ensure the adviser has reached a *minimum* requisite standard. CCLSWA is supportive of the PJC's Recommendation 8 as a component to improve professional standards, but we believe this measure *alone* is insufficient to ensure the financial adviser is competent to provide quality, professional, financial advice.

Restricted practice, mandatory supervision and mentoring

We submit that upon completing the professional year and the registration examination, new financial advisers should be subject to a minimum 2 years' of restricted practice and mandatory supervision by an unrestricted financial adviser. Such requirements exist in the legal profession for newly admitted lawyers. We believe such or similar measures would assist in the following ways:

- Provide guidance to a new financial adviser;
- Foster a culture of supervision and mentoring within the profession;
- Lift the public's perception of the profession; and
- Simultaneously ensure consumers are protected.

Licensees are legally responsible for the day-to-day supervision of their representatives¹. Recent events involving financial advisers of major Australian banks would suggest that this legal obligation has not been strictly adhered to and many consumers have suffered as a consequence.

We believe that a period of restricted practice and mandatory supervision and mentoring of new financial advisers would raise the professional standards and result in better quality advice.

Recommendation 9 - Ongoing professional development

CCLSWA encourages the implementation of Recommendation 9.

Recommendation 9 of the PJC model requires mandatory ongoing professional development for financial advisers. In many professions such as law, accounting and medicine, ongoing professional development is a mandatory and important component for a practising professional to maintain their technical knowledge and skills.

We submit that in order for financial advisers to retain their registration status, they be personally required to complete mandatory ongoing professional development on an annual basis. Such development training ought to cover core technical, regulatory, practical and ethical training.

Licensees currently have a legal obligation to ensure that their representatives meet relevant training and competency standards.² We are of the view that this obligation should be maintained so that the licensee *and* the financial adviser each has an individual legal obligation to ensure the financial adviser maintains the ongoing professional development.

Recommendation 11 – Code of ethics

We refer to our previous submission of 5 September 2014 and repeat our submission that:

- A national code of conduct should be adopted to regulate the profession and ethical behaviour of financial advisers; and
- Any national code of conduct should be subject to professional regulation.

The PJC model recommends that each professional association create its own code of ethics. In our view, multiple codes would produce unnecessary duplication and confusion. If a financial adviser were a member of more than one professional body and they are in breach of the code of ethics of a particular association, that financial adviser is most likely also in breach of the professional and ethical codes of their other professional associations.

Therefore we believe there is more merit in a single code of ethics across all professional associations.

Recommendation 5 – Register of financial advisers

CCLSWA encourages the implementation of Recommendation 5 but submits that further measures are required to protect consumers.

¹ Section 912A *Corporations Act 2001*

² *Ibid*

ASIC's financial adviser register (**Register**) was made publicly available from 31 March 2015. We submit that the Register is a good reference point for consumers but the current criteria simply does not extend far enough to protect the consumer.

A consumer would like to know several matters about their financial adviser:

- If the adviser is adequately qualified;
- The adviser's experience and the adviser's years of practice;
- The adviser's areas of competency and expertise;
- The identity of the holder of the financial services license;
- The adviser's remuneration structure; and
- Whether the adviser is independent or is remunerated on the basis of commission?

Financial advisers giving financial advice to consumers are instrumental in the consumers' decisions regarding their financial future, security and livelihood. A consumer would like to know if they can trust their financial adviser and be confident that the financial adviser is working in the consumer's best interests.

If the financial services industry is serious about protecting the consumer and improving the trust and confidence of the public, then full transparency is required. In this regard, consumers should be entitled to more information about their financial adviser. Such information should include:

- A fuller employment history (dating back more than five years);
- Details about an adviser's resignation or termination by previous employers;
- Other business activities;
- Prior complaints from customers, disciplinary actions and enforceable undertakings from ASIC as well as professional associations and employers.

We thank you for the opportunity to make this submission. We welcome your comments and questions. Please contact Faith Cheek on (08) 6336 7020 to discuss.

Yours faithfully

Consumer Credit Legal Service (WA) Inc.



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Faith Cheek
Principal Solicitor