SIFA Incorporated

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Submission to

MBIE

Disclosure requirements in the new financial advice regime

25 May 2018

Because of submission fatigue, we have decided not to use the template you have provided. Our submission will focus mainly only on selected matters.

Our over-riding thought that while disclosure is important, there is a real danger of potential clients being over-burdened with disclosure material. Some matters look likely to require to be disclosed on three or four separate occasions if all the proposals in the Paper are adopted.

1. Disclose as you go (DAYGO)

We agree with the principle of DAYGO, as it should ensure client get the information at the time that it should matter to them.

2. Principles not prescription

We endorse the requirements being set down in principled terms, not prescriptive.

3. MBIE should produce default leaflet for common material

We believe there could be as many as 2000 Financial Advice Provider licensees and up to 30,000 financial advisers and nominated representatives who will be providing advice on behalf of these financial advice providers.

We think it would be economic for MBIE to produce a leaflet that covers the following matters that each licensee and adviser will be required to disclose; these are some of the things summarised in par 22 a. b. and c. of your paper

- Who needs to get a FMCA financial advice licence, and what are the standard conditions
- What are the conduct and client care duties that a FAP/FA/NR is subject to
- What is an internal complaints process
- The requirement to have an External Disputes Resolution provider.

Advisers should be able to refer to and rely on this leaflet as part of their own public disclosure. They would then need to refer specifically only to conditions outside of standard (e.g. any specific conditions that apply to their own licence), any peculiarities of their internal complaints process and who their individual EDRS is.

However advisers would not be forced to use the leaflet and could use their own words if they so chose.

4. Adverse disciplinary findings / bankruptcy/company insolvent liquidation

We agree with the need to disclose such matters, but we think they should have to be disclosed much earlier in the process than you have suggested.

We think such matters will be most important at the time a client is deciding to approach a particular FAP and its FA or NR. This is always before a scope of service would be agreed. The latest appropriate time is probably when the adviser first meets with the client.

We believe the following matters should be included:

- Adverse disciplinary findings by FADC in the last 10 years. There is clearly an issue to be resolved where the name of the adviser disciplined was suppressed by FADC. If suppression led to no requirement to disclose, any defendant in a FADC hearing would seek suppression!
- Civil pecuniary penalties imposed in the last 10 years in terms of FMCA provisions
- Personal bankruptcy of the adviser within the last 10 years. This should apply equally to nominated representatives and financial advisers.
- If a Director of a licensee had been personally bankrupt or had been a Director of a company that had had an insolvent liquidation within the last 10 years (there is no policy reason to disclose a solvent liquidation).

We are not totally hung up on the relevant time being as long as 10 years, but given the amount of trust implicit in a client advisor relationship, we think the time should be longer rather than shorter.

5. Disclosure should not be able to be solely verbal

We do not think disclosure that is only given verbally is adequate. This is both to protect the client and the adviser. Re the latter, human nature suggests that a complainant will assert total recall of everything that was said and not said, regardless how much time has elapsed between the disclosure and the hearing. We think all disclosure should have to be confirmed in writing.

6. Disclosure when replacing a financial product

We believe that where an adviser is recommending replacing an existing product with a new product, if there are any benefits of the existing product that will be lost by its replacement, they should be specified.

This will be particularly important with insurance contracts and superannuation arrangements with associated insurance benefits

Where the adviser does not know the answer to the question of whether any benefits might be lost, then the adviser should be required to give a general warning that there may be benefits that may be lost but the adviser doesn't know, and perhaps even be required to recommend that the client seek advice from someone who would know. That at least puts a client on warning. If the client chooses to ignore the warning, then *caveat emptor.*

Maybe MBIE or FMA could design a standard warning about the general risks of switching an insurance policy (e.g. possible loss of cover for health conditions that have arisen post acceptance of the original contract but before the new contract.

We do not think the issue figures to the same extent with investment products.

7. Conflict of Interest (COI) disclosure by persons giving advice on behalf of a Vertically Integrated Organisation (VIO).

MBIE has not specifically addressed the actual disclosure that will be required when someone giving advice on behalf of a VIO recommends the VIO's own product?

We believe that where an adviser for a VIO gives "advice" to purchase the VIO's own product (where VIO includes the lead firm and all its associates both upstream and downstream) then the adviser should have to disclose all the fees and charges that the VIO will be paid right up the vertical integration.

We can hear the screams of "NO" from the VIO's even before they know of this submission. But we submit that is what a full disclosure including associates under the proposed law requires.

[We would however give the VIOs an easy out – admit that the transaction is really a sale, in which case there would be no disclosure requirements at all]

This submission is made on behalf of SIFA Inc by Murray Weatherston AFA (Immediate Past Chair)