



Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry - Financial advice.

Summary of Recommendations

- 1. Ongoing fee arrangements**
 - a. Annual renewal and payment*
- 2. Lack of independence**
 - a. Disclosure of lack of independence*
- 3. Quality of advice**
 - a. Review of measures to improve the quality of advice*
- 4. Conflicted remuneration**
 - a. Grandfathered commissions*
 - b. Life risk insurance commissions*
 - c. General insurance and consumer credit insurance commissions*
- 5. Professional discipline of financial advisers**
 - a. Reference checking and information sharing*
- 6. Reporting compliance concerns**
- 7. Misconduct by financial advisers**
- 8. A new disciplinary system**

1. Ongoing fee arrangements

- a. Annual renewal and payment*

The law should be amended to provide that ongoing fee arrangements

(whenever made):

- must be renewed annually by the client;
- must record in writing each year the services that the client will be entitled to receive and the total of the fees that are to be charged; and

- may neither permit nor require payment of fees from any account held for or on behalf of the client except on the client's express written authority to the entity that conducts that account given at, or immediately after, the latest renewal of the ongoing fee arrangement.

2. Lack of independence

a. Disclosure of lack of independence

The law should be amended to require that a financial adviser who would contravene section 923A of the Corporations Act by assuming or using any of the restricted words or expressions identified in section 923A(5) (including 'independent', 'impartial' and 'unbiased') must, *before providing personal advice to a retail client, give to the client a written statement (in or to the effect of a form to be prescribed) explaining simply and concisely why the adviser is not independent, impartial and unbiased.*

3. Quality of advice

a. Review of measures to improve the quality of advice

In three years' time, there should be a review by Government in consultation with ASIC of the effectiveness of measures that have been implemented by the Government, regulators and financial services entities to improve the quality of financial advice. The review should preferably be completed by 30 June 2022, but no later than 31 December 2022.

Among other things, that review should consider whether it is necessary to retain the 'safe harbour' provision in section 961B(2) of the Corporations Act. Unless there is a clear justification for retaining that provision, it should be repealed.

4. Conflicted remuneration

a. Grandfathered commissions

Grandfathering provisions for conflicted remuneration should be repealed as soon as is reasonably practicable.

b. Life risk insurance commissions

When ASIC conducts its review of conflicted remuneration relating to life risk insurance products and the operation of the ASIC Corporations (Life Insurance Commissions) Instrument 2017/510, ASIC should consider further reducing the cap on commissions in respect of life risk insurance products. Unless there is a clear justification for retaining those commissions, the cap should ultimately be reduced to zero.

c. General insurance and consumer credit insurance commissions

The review referred to in Recommendation 3 should also consider whether each remaining exemption to the ban on conflicted remuneration remains justified, including:

- the exemptions for general insurance products and consumer credit insurance products; and
- the exemptions for non-monetary benefits set out in section 963C of the Corporations Act.

5. Professional discipline of financial advisers

a. Reference checking and information sharing

All AFSL holders should be required, as a condition of their licence, to give effect to reference checking and information-sharing protocols for financial advisers, to the same effect as now provided by the ABA in its 'Financial Advice – Recruitment and Termination Reference Checking and Information Sharing Protocol'.

6. Reporting compliance concerns

All AFSL holders should be required, as a condition of their licence, to report 'serious compliance concerns' about individual financial advisers to ASIC on a quarterly basis.

7. Misconduct by financial advisers

All AFSL holders should be required, as a condition of their licence, to take the following steps when they detect that a financial adviser has engaged in misconduct in respect of financial advice given to a retail client (whether by giving inappropriate advice or otherwise):

- make whatever inquiries are reasonably necessary to determine the nature and full extent of the adviser's misconduct; and
- where there is sufficient information to suggest that an adviser has engaged in misconduct, tell affected clients and remediate those clients promptly.

8. A new disciplinary system

The law should be amended to establish a new disciplinary system for financial advisers that:

- requires all financial advisers who provide personal financial advice to retail clients to be registered;
- provides for a single, central, disciplinary body;
- requires AFSL holders to report 'serious compliance concerns' to the disciplinary body; and
- allows clients and other stakeholders to report information about the conduct of financial advisers to the disciplinary body.

Increasing protections relevant to Financial Advisers

There are recommendations that seek to change, or add to, the law, or industry codes of conduct, in ways that will increase protections to consumers from misconduct or conduct that falls below community standards and expectations. Those recommendations are:

- ongoing fee arrangements (whenever made) must be expressly renewed by the client each year.
- prohibiting advice fees from being deducted from MySuper accounts and limiting deduction of advice fees from choice accounts.
- prohibiting hawking of superannuation products and insurance products.