

General Manager  
Retail Investor Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

**Thank you for the opportunity to submit our thoughts on the FOFA amendments. This is the formal submission for Personal Asset Services Pty Ltd and its owners and operators, Philip and Alison Carman. They have 32 years and 11 years' experience in financial services and in particular, the ownership, management and compliance duties for and AFSL, respectively.**

As a 32-year veteran of the financial advice industry I have seen many changes come and go, as well as too many dodgy dealings amongst my industry colleagues; some of whom have done gaol time, but others of whom have managed to slip past the long arm of the law – either for technical reasons or by sheer good luck. Unfortunately the Money Business seems to attract both the worst and the best of those who seek to profit from their knowledge of financial matters... so the conclusion that should be drawn is that **regulation is more necessary for financial services than for some other industries, where damage done is less threatening to the lives and financial health of consumers and the economy in general.**

I strongly believe that **rolling back any of the FOFA measures designed to increase transparency to and for consumers is both misguided and detrimental both to consumers and to the health and confidence in financial services** and that instead, **there needs to be strengthening of regulation.** And **consumers must be protected** from those who are either poorly trained, conflicted by remuneration methods designed to encourage sales of product rather than advice about product, or who deliberately seek to misrepresent and/or defraud consumers. The ongoing distrust of financial service providers is an impediment to the economic health of the country and will not be well served by rolling back some of the key provisions of FOFA.

**The most effective measure that can be taken for reform of the process is to require all advice to be fee-for-service rather than based on sales.** Not only would that remove nearly all conflicted remuneration, but would also encourage provision of advice about what NOT to do (often far more important). No other profession is paid to move product (doctors, lawyers, accountants, etc would be run out of town if they prescribed products to clients and were paid by the product manufacturers for their services...) and nor should we.

The alternative solution (if you don't want to impose 100% bans on commissions) is to revert to the regime of about 23 years back where there were two classes of licences; **ADVISERS** and **DEALERS**. **Only those who did NOT receive commissions could call themselves "Advisers". The rest were (quite rightly) identified as being "dealers" or sellers.** THEN the public could quite readily identify and commentators would very loudly discuss the pros and cons and the MARKETPLACE would then adjust accordingly.

(A simple comparative analogy is that where antique "dealers" – are those who sell antiques, and antique "advisers", who don't sell antiques, but instead advise clients on what they may collect and why. Confusion is removed and conflicts are either immediately apparent or are removed. They manage to do that without legislation, because the public already understands the two terms.)

Meanwhile, the proposed **grandfathering of client arrangements for disclosure is the equivalent to promoting a two-tiered system** but where clients have NO WAY to know where they stand and who they are dealing with. Similarly, **removing the fee disclosure requirements simply leaves consumers**

**in the dark.** There should be no reason why fees (or in this case, commission – which is what these really are) are not disclosed and it would be even MORE intolerable for financial services (which is about money) if this is allowed to continue. It would be the equivalent of doctors NOT being required to disclose health risks/costs to patients.

We submit that **it would be a grave error to remove opt-in requirements**, that were designed to allow consumers choice about who, if anyone, received an ongoing financial benefit, to the consumer's detriment (potentially for decades) for a decision they made at a time when disclosure was inadequate in the extreme. The best way to remove opt-in issues would be to **remove undisclosed commissions**. (We should remember that many are so long-standing that they were NEVER disclosed, so those consumers currently have no idea that they are paying, nor how much. The removal of Opt-In leaves them disadvantaged and is clearly wrong.)

Again, if this (removing undisclosed commissions) is too hard then the only alternative would be full disclosure of payments with a notice setting out how those payments can be removed at the client's sole discretion. The payments ARE 100% the clients' money – let's NOT get confused by any notion otherwise, as some would have you believe that the promoter pays the costs from its own funds. The funds go to the manager and then are paid straight out to the (person acting effectively as the manager's agent) adviser, dollar for dollar. The argument to the contrary is simply one of the great big lies of the financial service sector.

**But here is the most important point I would like to make in this submission:**

**The rules around disclosure, fairness, transparency and duty of care should NEVER be tailored to the industry's benefit, but ALWAYS to the CONSUMER'S benefits, and their need for protection. This is true for any industry, but is especially the case (and should be obvious to all) in health and finance, where the damage done can be terminal.**

In my view the large financial institutions are too close to and have had the ear of legislators for far too long, and this is damaging Australia's standing in a field where only a decade or so ago it was the clear world leader. Since the 1990's we have fallen behind the UK (which used to have all the same conflicts of interest – and more – of our industry, but which has removed nearly all of them since) and we are now falling behind even the US which was regarded as “buyer beware” territory.

I have held high office in the industry many years ago but relinquished it when I felt that conflict of interest was becoming entrenched (as Western Australian Chair, **I was a founding member of the board of the AIPA, in 1987-89**, which became the FPA and which once acted to self-regulate, but then was swamped by the interests of the institutions). Since then I have proudly NOT been a member of the FPA, due to its own entrenched conflicts of interest and its unwillingness to support consumers ahead of the selfish interests of its (largest) financial members. Instead I have continued to lead industry discussions on improving ethical behaviour and in setting and promoting higher business standards, as a community service rather than as a career move, or for other reward.

**Over my long career in financial services I have acted as required person/Responsible Manager for an WA-based AFSL for many years, having previously been a director of an AFS - licenced company and was also manager of a financial planning division of a large firm of stock brokers, transitioning them to fee-for service, in 1990. My experience is as wide as any in this industry. Since 2007 I have held and operated my own AFS Licenced advice practice**, and despite being a small business (micro, in fact) we bear all the costs and responsibility that goes with that role of licensee – as could and should every practice – so as to ensure my clients have access to totally unbiased, un-conflicted and genuinely best-interest advice at all times. Those who argue that the expense is too high need to

better understand that it is our industry's behaviour that has caused those costs to soar. I look forward to a day when less regulation may be required, but we are far from that time.

**I also act currently as a Responsible Manager for another AFSL – that of a large firm of accountants who wanted to transition to Financial Advice and who needed the help of an experienced individual with the highest possible standards.** That role has been in train for two years and the firm is emerging as one of the best of breed and an industry leader in its field, due to its excellence and transparency.

If I can do all that and survive, charging fees that allow for small and larger investors to find value and to gain access to quality advice, then there can be no valid argument that it is unaffordable for others to do so. **The argument about “access to advice” is being made as a means to retain a system that fails all tests of fairness, transparency and “quality”, not for consumers’ benefit, but for the financial benefit of an industry that has already grown fat (and lazy!) on the profits reaped from often poor quality service and advice. Those who act fairly have NOTHING to lose with transparency becoming the over-riding characteristic of the requirement for ALL advice provision and ALL regulations pertaining to it.**

Being 100% transparent *can* be inconvenient, but business is not about having a convenient way to make money, it is about providing quality service/products at a fair price and allowing the MARKET to decide over time if you are up to scratch and deserve the reward of profit. Those who profess to follow market principles and yet keep seeking soft-touch from regulation are missing the point that the government's ONLY role is to protect consumers, who are electors. It has NO ROLE to play in protecting businesses, which are NOT electors. (As a business proprietor I have a vote, but only because I am a registered, voting citizen. I have no additional vote as a business proprietor and nor should I.)

Australian consumers of financial services deserve better treatment from regulators than they are getting. That's not ASIC's fault. It's the fault of those who restrict ASIC's funding and ability to deal efficiently with the growing legal framework that surrounds, but does not constrain those who are either incompetent or who wish to do harm. I ask Treasury to submit in its findings that **ASIC requires better funding and more teeth, rather than less.**

Please feel free to contact me as per details below. I may well be in a unique position to assist you in your considerations and would be a very willing contributor to a more balanced conversation so that decisions taken actually benefit consumers as well as help the industry to transition to the professional recognition it so desperately craves.

*Regards*

*Philip Carman*

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