Head of Secretariat
Financial System Inquiry
The Treasury
Langton Crescent
PARKES ACT 2600

By email: fsi@treasury.gov.au

26 August 2014

RE: Financial System Inquiry – Final Report

Dear FSI Panel Members,

The Financial Planning Association of Australia (FPA) welcomes the opportunity to respond to the Financial System Inquiry's Interim Report.

The FPA's submission responds to the issues raised by the FSI's Interim Report, and draws on our first-round submission in order to form observations and practical recommendations for the Panel to consider in its Final Report.

Thank you again for the opportunity to make a submission to the Inquiry and we welcome further opportunities to provide feedback and consultation to the Panel.

If you have any questions, please do not hesitate to contact me on 02 9220 4500 or dante.degori@fpa.asn.au.

Yours sincerely,

Dante De Gori
General Manager Policy and Conduct
Financial Planning Association of Australia

Financial System Inquiry

Second Round Submission

FPA submission to:

FSI Panel

26 August 2014

FINANCIAL PLANNING
ASSOCIATION *of* AUSTRALIA

Financial System Inquiry

FPA SUBMISSION | 26 AUGUST 2014

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1 - INTRODUCTION

The Interim Report of the Financial System Inquiry (FSI) has an encouraging focus on improving outcomes for Australians who interact with the financial system, creating stability in policy settings for the superannuation system, and facilitating efficient regulatory processes.

Whereas our previous submission offered a broader conceptual framework for the financial system, as well as suggestions for how the FSI Panel could approach these issues, this submission forms more detailed recommendations and discussions of the benefits, costs, and risks of various policy options.

Our second-round submission reflects our engagement with members and policy committee members, as well as our first-round submission to the FSI Panel and the development of the *FPA's White Paper (and subsequent 10 point-plan) on the Future of the Profession*. We are grateful to have been included in the FSI's industry consultations on financial advice and retirement incomes, and these have also informed our thinking in this submission.

The Interim Report has invited discussion on reforms to almost every aspect of the Australian financial system, including some of the most fundamental conceptual and operational aspects of the system. We hope that the Final Report embraces both the substance of our recommendations and the conceptual approach we have adopted across all of our submissions.

Financial Adviser Education and National Adviser Register
Please note that the FPA will be providing the FSI Panel with a *supplementary submission* on education standards for advisers, as well as the proposal for a register of financial advisers, as this material is being developed in conjunction with current consultations with the Parliamentary Joint Committee on Corporations and Financial Services and other industry working groups.

2 – SUPERANNUATION

Australia's world-leading superannuation system is an excellent mechanism for creating and managing an enormous pool of Australia's retirement savings. Despite the scale and importance of this system, there is no fundamental objective of the superannuation system that is enshrined in legislation. The lack of a conceptual framework to guide the development of the system in its early stages has been the root cause of the issues identified in the Interim Report.

The most fundamental and influential recommendation that the FSI Panel can make in its Final Report is to describe the objective(s) of the Australian superannuation system for the Government to adopt.

Aligning the practice of product development, financial advice and other parts of the financial services system with clear objectives when interacting with the superannuation sector would be a powerful driver of the cultural change required to address fees, leverage, portability, and the hazard of 'short-termism'.

We would agree with the statements of principle from the *Australia's Future Tax System Review* as cited in the Interim Report, but those aspirational principles should be unified under strategic objectives enacted by legislation. Notwithstanding the need for high-level policy reform for the superannuation sector, we support the existing 'three pillars' policy as a model for retirement income in Australia.

2.1 – Fee competition and consumer engagement in default superannuation

2.1.1 – Designing a competitive default superannuation fund market

It is difficult to design an appropriate default superannuation market that encourages transparent fee competition while preserving retirement outcomes for individuals. The difficulty emerges from the fact that those who have the greatest stake in the decision (i.e. disengaged retail investors) are disengaged from the market itself.

If different MySuper products offer materially better or worse performance for materially similar risk (either for a particular individual, class of persons, or generally), then fee competition is not the only viable form of competition in the default superannuation space. If they offer materially similar performance for materially similar risk, then fee competition should be encouraged.

If we accept that MySuper is an appropriate minimum standard of service for a default superannuation product, then measures which aim to improve fee competition in the default superannuation market must not detract from that standard. Facilitating fee competition will involve a review of how individuals elect to use a default superannuation fund, how that fund is chosen, and whether or not there is any value to the individual for having one default product over a different product beyond fee competition.

We believe that there are some positive arguments for the Interim Report's suggestion of an auction-based solution. The FPA has considered whether opening the award process to more MySuper funds would solve the issue, but we are unsure as to whether promoting fee competition using the current industrial award structure is beneficial. Opening the award would require the employer to nominate the default fund for its employees which, if the only relevant metrics for competition are fees, is in theory less competitive than an auction system. We also believe that this market would be inefficient, as there is currently no legislative compulsion or business case for employers to choose a fund with lower costs for their employees.

However, there are potential trade-offs from an auction system as well. While consolidation of superannuation funds is increasing and is contributing to fee competition, an auction system may accelerate this process to the point where only a few fund managers can contest the market due to the economies of scale. When combined with the default insurances which are included within default superannuation products, there is the potential for an auction system to create limited competition among a small number of vertically integrated funds.

As such, our support for an auction-based market system for the management of the default superannuation sector would depend on the ability to resolve competition issues and whether MySuper products are sufficiently similar that the default superannuation market should focus on fee competition.

Recommendation 1:
The Final Report of the FSI should explore the benefits and trade-offs of expanding the list of default funds in industry awards (allowing all MySuper funds to be eligible) and/or an auction system, as well as canvassing other alternatives.

2.1.2 – Vertical integration and fee competition

The Interim Report notes that:

> "The costs of superannuation funds, and the features they offer to members, are affected by the degree of competition among those providing services to the funds. This includes fund managers competing for superannuation fund clients, fund managers competing for access to platforms, and platforms competing to attract advisers. A trend in the wealth management sector is towards more vertical integration. Although this can provide some benefits to members of superannuation funds, the degree of cross-selling of services may reduce competitive pressures and contribute to higher costs in the sector."[1]

While vertical integration will be considered in more detail in the *Consumer outcomes* section, the impact of vertical integration on fee competition in superannuation has several aspects to it. We note that industry superannuation funds have used vertical integration to reduce costs for default superannuation products, and that the Future of Financial Advice (FOFA) reforms have ensured that aligned wealth management businesses must act in the best interests of the client and prioritise their interests over those of the adviser and the adviser's related entities. Cross-selling of superannuation through personal advice should increase competitive pressure, so long as the form and substance of the FOFA reforms is the practice of Australia's financial planning sector.

General advice offered through vertically integrated models does pose a risk of reducing competitive pressure in the superannuation sector. Vertically integrated models are unique in their capacity to use existing client relationships to generate sales of superannuation products. Where decisions regarding superannuation products are made on a non-advised basis with a limited understanding of the product and without considering the market, these decisions could contribute to higher costs, and the institutional structures that support these models would reduce competitive pressures in the sector.

These risks are better managed through examining the role that general advice plays within the Australian financial services sector, supporting the cultural changes started by the FOFA reforms, as well as strengthening key gatekeepers within the financial sector.

2.1.3 – Consumer engagement with the superannuation system

The best outcome for the superannuation system would be for the majority of consumers to make informed and/or advised decisions on their superannuation fund, and to limit the role of the default superannuation market as much as possible. Policy options which promote consumer engagement with superannuation should be recommended.

Some of those, as discussed in the *Consumer outcomes* section of the Interim Report, are directed generally towards reducing complexity and improving the comparability of products. With respect to superannuation, consumers could be better engaged by financial literacy efforts targeted specifically towards concepts relevant to superannuation, and reframing the consumer's interaction with superannuation away from their employment relationship.

[1] Interim Report p 2:105-2:106

With respect to disclosure, metrics which are simple to explain and relevant to the long-term focus of superannuation products should be encouraged. The requirement that MySuper product dashboards include a measure of risk over 20 years is a positive step in this direction. The support for income projections in annual statements for members in the Report (or offered through online comparators as a disclosure mechanism for the market) is also encouraging.

It is very important that competitors in the superannuation market compete on these metrics in order to avoid subverting the public policy intention behind compulsory superannuation.

2.2 – 'Short-termism' in superannuation

The Interim Report notes a tendency for the financial services sector and the Australian public to adopt a short-term focus on superannuation outcomes. The Report specifically mentions active management, 'league tables', and lifecycle investment as factors which influence the scope of superannuation decision-making.

While we acknowledge the basis for these arguments, our view is that inconsistency in tax and superannuation policy positions is a major contributor to this issue. The FPA has supported the rigorous review of the financial system since the Global Financial Crisis, but the role of superannuation as a pillar in Australia's retirement income strategy requires a regular, apolitical system of review in order to build public confidence in superannuation as an independent institution.

Much of the inability to form an apolitical public policy on superannuation stems from the competing demands of the superannuation system to provide retirement income for Australians and to invest in Australia's economy. The public/private divide in superannuation policy settings is not clearly defined, and has the potential to form social divisions within Australian society. Ambiguity surrounding the purpose of the system filters into public attitudes towards the system, which inevitably centres around whether the superannuation system is a form of taxation or a system for tax-effective investment.

Short-termism also stems from consumer disengagement, particularly as consumers are disengaged from decisions regarding risk and fees over a long timeframe which would allow the superannuation market to function more efficiently.

Finally, the media's reporting of superannuation has been a contributor to the Australian public's short-term perspective on superannuation. Policy options which adjusts the purpose of the superannuation system towards retirement incomes and provide simple metrics which reflect the long-term costs, risks, and returns of superannuation products could encourage the media to report on the performance of the superannuation system with more relevance.

Recommendation 2:
The Final Report should consider how future superannuation policy decisions should be determined. This could include the option of recommending the establishment of an independent board/institution to assess whether the superannuation system is meeting its objectives. The functions of this board/institution could be to perform periodic reviews of the superannuation system's performance and to recommend policy changes to government.

2.3 – Self-Managed Superannuation Funds (SMSFs)

SMSFs (and leverage in SMSFs particularly) have faced considerable scrutiny in the Interim Report and elsewhere. In the Interim Report, the ban on leverage in APRA-regulated funds was argued as a stabilising factor in the Australian economy.[2] However, a prospective ban on leverage within SMSFs may not be the best way forward, as the weaknesses of SMSFs are properly characterised as an issue in financial advice and consumer protection rather than a weakness in the SMSF model.

Borrowing in SMSFs is equal to $2.3 billion of the $4.9 trillion in total lending for residential property. Lenders as providers of funding retain control over the growth and stability in this market, just as with lending to an investor outside of super.

Ultimately, whether a strategy is good or bad relies on whether it is appropriate for the client's interests, and whether it was designed with those interests in mind. There are strategies involving leverage in superannuation which can benefit members of an SMSF, and can do so without creating material systemic risk. For example, investors who wish to use leverage in their SMSF to take advantage of an employee share option scheme, or to invest in a small business venture, should not be prevented from doing so unless the existence of leverage in SMSFs poses an unacceptable systemic risk.

Much of the controversy surrounding leverage in SMSFs can be solved by addressing poor and conflicted property investment spruikers in connection with SMSFs. A mixed strategy to achieve better outcomes for leverage within SMSFs would include; promoting effective scaled advice with respect to superannuation, robust surveillance and enforcement action against rogue and un-regulated operators in the SMSF sector, appropriate and adapted regulation of general advice, enshrining the term 'financial adviser' and 'financial planner' to those who provide personal advice on non-basic products, and raising financial literacy regarding superannuation.

Recommendation 3:
Before deciding on any action on leverage in SMSFs, the FSI Panel should recommend a review into the use of leverage in the SMSF sector in order to identify what, if any, vulnerabilities exist as a result of borrowing inside SMSFs. This recommendation is consistent with the Cooper Report recommendation to review gearing in superannuation after two years.

[2] Interim Report, pp2:116-2:117

3 – RETIREMENT INCOME

Australian public policy development in superannuation has focused on the accumulation stage, while the pension phase has been left largely unregulated. There are political and social reasons for leaving Australians to manage their retirement savings. However, where the mismanagement of retirement incomes poses a systemic risk to the financial system and subverts the purpose of Australian superannuation, it is appropriate to ensure that the massive taxation support and regulatory architecture applied to the superannuation system is producing positive outcomes.

3.1 – Longevity risk and public policy

The Interim Report goes to significant lengths to frame questions about retirement income (whether inside or outside of superannuation) as a public policy response to longevity risk. While there is scope for further product development to engage with longevity risk, the current policy settings exist in an environment where many individuals face retirement without a financial plan to make their existing resources in superannuation last until the average life expectancy, or even a large enough balance to fund a comfortable retirement.

The need for a public policy response to longevity risk will be determined by whether measures to improve the quality, affordability, and public confidence in financial advice have been effective in improving superannuation outcomes for Australian retirees once the superannuation system has reached maturity. In response to the policy options presented in the Interim Report with respect to retirement income,[3] we would support measures which improve the availability and quality of scaled retirement and longevity risk advice, as well as independent board/institution dedicated to systemic review of Australia's retirement income system.

By contrast, we strongly disagree with the other options presented to encourage retirement income products. If policy incentives, default options for retirement benefits, and/or mandatory retirement income products are implemented by the Australian government, then Australians can spend their entire lives completely disengaged from the privatised retirement income system in Australia. It is possible to make the economic case for an efficient retirement system which provides identical (or even superior) outcomes for entirely disengaged consumers. The political, social, and cultural consequences of discouraging financial citizenship in favour of technocratic administration make these policy options unfair to Australians and corrosive to our values.

As such, we argue that the FSI Panel should recommend that the Government must resist the urge to implement compulsory and/or default longevity risk policy options unless other measures to improve retirement outcomes have failed to improve the feasibility of the age pension.

3.2 – Longevity risk and financial product development

The two main barriers to innovation in longevity risk products are weak consumer demand and the minimum drawdown requirement for a tax exemption on earnings in the product. Higher superannuation balances (as a result of the super system maturing) and better financial advice will help to create demand for longevity risk products.

[3] Interim Report, pp4:19-4:25

The justification behind a minimum drawdown on pension products that increases with age is to prevent tax arbitrage between investments inside and outside of superannuation during the pension phase. The minimum drawdown also encourages retirees to manage their finances prudently, by allowing their pension to generate further tax-free income so long as the payments are structured by a minimum drawdown. While this measure does fulfil its policy objectives, it also provides a tax disincentive to purchase financial products which generate income but do not pay any of this income until a later point in the retiree’s life.

The challenge for the FSI’s Final Report is to recommend policy options that prevent misuse of tax-exempt pension products while also allowing individuals to purchase financial products with materially equal tax treatment to account-based pensions that defer payment of the policy for a period of time.

Another challenge is that longevity risk products inherit some of the features of investment products while also having the features of insurance products, which makes balancing their tax treatment difficult. Some policy issues and options which the Panel should consider are:

- <u>Commutability and residual capital:</u> Tax-exempt status could be granted to longevity risk products which are non-commutable, as well as having limits or a prohibition on passing residual capital to beneficiaries on death.
- <u>Facilitating hybrid products:</u> By implementing policy settings that allow longevity risk products to attach to account-based pensions or other pension products, the Government could keep the minimum drawdown rule and still facilitate a market for longevity risk products. However, this option may create an inefficient market for non-advised clients, as this policy option is effectively mandated cross-selling of longevity insurance with a pension product.
- <u>Pension earnings tax:</u> A more radical option would be to introduce a tax on income from pension products, so long as it is equal to the tax in the accumulation stage. This tax may be implemented at a particular asset threshold. However, this option does conflict with the broader policy goal of stability in the superannuation system.
- <u>Minimum drawdowns:</u> The minimum drawdown requirement is quite inflexible without significant Government intervention, as the Government’s decision to halve minimum drawdowns during the Global Financial Crisis would indicate. As long as the drawdown is a percentage of the balance, the minimum standard will be more arbitrary than a principles-based approach.
- <u>Instalments:</u> In the current environment, paying a lump sum for longevity risk products would isolate those funds from the tax-exempt status of pension products. Purchasing the product in instalments paid from the income from a pension would allow more of that income to generate returns tax-free. This option would not solve the core policy problems that inhibit innovation in this sector.

Our view is that the most appropriate policy options will encourage hybrid products, focus on regulating the features of longevity risk products as a form of insurance. Approaching longevity risk products in this way will allow policy settings to reflect the reality that Deferred Lifetime Annuities (DLAs) and other related products are intended to manage risks related to the sufficiency of an individual’s existing retirement savings.

Recommendation 4:
The FSI Panel should address longevity risk by recommending options that improve the availability and quality of financial advice, and remove barriers to product innovation.

Recommendation 5:
The FSI Panel should recommend that any changes to superannuation policy settings in the pension phase in relation to longevity risk must articulate the interaction of that policy with the age pension.

Recommendation 6:
The FSI Panel should assess the suitability of the minimum drawdown requirement in its current form, with a view to consulting on and recommending a principles-based approach to tax-exempt status for incomes on pension products.

4 - CONSUMER OUTCOMES

4.1 – Disclosure and consumer engagement

The FSI Interim Report indicates that the current disclosure-based regime has failed to protect consumers from harm when interacting with the financial system. The Report notes:

> "Although disclosure is an important part of the regulatory regime for providing financial products and services, alone it has not been sufficient to enable consumers to make informed decisions and consistently purchase financial products and services that meet their needs. Consumers are often disengaged and do not invest the time — and some consumers also lack the financial literacy skills — to understand disclosure documents. Disclosure has also been costly for industry. These problems remain despite numerous efforts to improve the regime."[4]

Nonetheless, disclosure is a vital part of any financial system that relies on the choices of its participants. Disclosure should form part of a mixed strategy to engage consumers and protect consumers. Engaging the self-interest of consumers while reducing financial exclusion and inequality of opportunity is important to this process, and so is tailoring disclosure to the varying financial literacy and learning styles of Australia's retail consumers.

We agree with the five reasons for consumer disengagement that the Interim Report puts forward. However, we also believe that institutional mistrust is another large cause of consumer disengagement. The fact that consumers mistrust Australia's financial system due to constant regulatory uncertainty and media interest in financial services has resulted in a subsequent mistrust of the disclosure regime.

We also believe that part of the problem is that financial services licensees and legal professionals are responsible for the disclosure process, which in turn stems from the perception in the financial services sector that disclosure documents are designed with regulatory risk in mind. Neither compliance staff nor lawyers are naturally suited to the simplicity, clarity, and conciseness in written expression required for consumer disclosures that are appropriate and adapted to their learning style.

Furthermore, the causes of disclosure failure are intimately connected with each other. For example, the incentive to improperly manage conflicts of interest is exacerbated by low consumer engagement, the complexity of disclosure documents, and widespread financial illiteracy. Positive change can only occur through a mixed strategy of reform aimed at creating a critical mass of behavioural change.

The options presented in the Interim Report are positive steps, and each should be adopted through regulatory, co-regulatory, and self-regulatory approaches. While each measure individually does not solve the issue, and even together they have to be supported by examining other gatekeepers, financial literacy efforts, and other consumer protection mechanisms, they would go a long way to fixing the disclosure regime.

[4] Interim Report, p3:54

Standardisation of language is an excellent way to create simpler disclosure documents, especially when this strategy aligns with online comparison websites that allow information about standard metrics to be easily accessible to consumers. The integration of Standard Risk Measures in the MySuper product dashboard is an excellent example of an industry response to principles-based disclosure mechanisms.

One suggestion to improve the clarity of disclosure is to clearly separate disclosures regarding the advice or product from disclosures with respect to the advice or product provider. Layered disclosure would allow SOAs and PDSs to disclose that information clearly, but focus on the aspects of the advice or the product which are most relevant to the client's decision. In this case, professional judgment is required as to what is most relevant to the client's decision, rather than compliance with a rule for the sake of compliance.

The retail/wholesale/sophisticated investor distinction does create an easy way to provide more cost-effective disclosure, but the monetary thresholds seem arbitrary. Beyond the use of professional judgment to indicate which forms and how much disclosure is necessary for the particular needs of the client, then applying the same disclosure requirements for all clients is the only theoretically consistent position.

Our consultation with members has also revealed the view that more could be done to simplify regulations regarding the soft-copy provision of disclosure documents. Clients should be able to receive disclosure documents in the form which is most convenient for them to understand, which includes online delivery and formats designed for mobile devices.

Recommendation 7:
The FSI panel should recommend standardised 'simple' language and metrics to describe complex concepts for investors – for example a standardised definition of balanced portfolio.

Recommendation 8:
The FSI Panel should review the definition of wholesale/sophisticated investor to determine the appropriate thresholds for protection and disclosure offered to that client.

4.2 – Financial advice

4.2.1 – General advice

The FPA's first round submission to the FSI Panel observed that there is significant confusion in the market, and within industry, media, Government and consumers about the definitions and roles of financial planners/advisers, and those that sell financial products. Some incorrectly mistake the use of the word 'advice' to be a standard definition when in fact there is a significant legal and technical difference between 'general' and 'personal' advice.

Defining financial product advice on the basis of whether or not the advice makes a personal recommendation is complex and ignores the realities of how individuals make decisions. This risk is confirmed by ASIC's *Report 384 – Regulating Complex Products*, where the Report states:

> "*Our research has indicated that marketing information plays a particularly strong role in product distribution and may influence investors' decision making more than other product disclosure. In particular, when investors approach product issuers or other intermediaries responsible for selling products directly, rather than going through advisers, the information contained or implied in product issuers' marketing information is often the first, and may be the only, information that investors use to decide whether or not to invest in that product.*"[5]

Framing general advice as financial advice plays into the behavioural aspects of financial decision-making by giving the impression that the advice has a reasonable basis or is appropriate for the client, and thereby exposes retail investors to decisions made under uncertainty about the regulatory framework for that advice.

As with many other problems in the Australian financial system, our reliance on a disclosure-based regulatory approach has contributed to this confusion. While a general advice warning is required to be issued when providing general advice, it is the context of the advice which is more influential on many consumers than the warning.

According to ASIC licensing data, there are 50,276 Australian Financial Services License holders and 51,477 authorised representatives of AFSL holders who are licensed to provide 'financial product advice' as defined under the Corporations Act. Such people might work as bank tellers, product provider call centre staff, sales people, or fully-fledged financial planners all providing different types of advice services to consumers depending on their training, competency, and authorisation. However, from a consumer perspective there is minimal understanding in the different roles and restrictions placed on the different providers, as well as the limitations of the advice that consumers may be provided.

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[5] ASIC, *'Report 384 – Regulating Complex Products* ' (January 2014), at [46]

A major obstacle to effective separation of financial advice and product information is the wide variety of conduct that is presently described by 'general advice'. It is difficult to imagine a uniform set of regulations which can effectively regulate all forms of information about financial products within every single context these discussions or communications may arise. Part of the problem is revealed in the choice between describing general advice as 'product information' or 'sales information'. Both of these terms are inadequate to describe and apply to the context of each instance where financial product information that is not a recommendation based on personal circumstances is provided.

For the purposes of protecting consumers from misrepresentations about the suitability of product information for their circumstances (whether those misrepresentations are overt or contextual), a clear separation between financial advice and product information is required. In the long term, providing meaningful regulatory categories for different forms of financial product information is a very difficult but necessary project. These categories are required to appropriately and effectively regulate different communication channels through which consumers access information about financial products.

Recommendation 9:
The FSI Final Report should recommend re-naming general advice as 'product or general information', and also recommend that the terms 'financial advice' and 'financial product advice' should only apply to personal advice as defined by the Corporations Act.

4.2.2 – Separation of product and advice

The definitions of personal and general advice in the Corporations Act are fundamentally tied to the definition of 'financial product advice', which in turn requires that a recommendation to acquire, dispose of, or otherwise deal in a financial product (as defined by the Corporations Act) is fundamental characteristic of whether financial advice has been given. This definition does offer ASIC and the Government the ability to respond to consumer detriment as a result of the misselling of financial products. However, the regulatory and cultural ties between financial products and financial advice are archaic, and are detrimental to innovation and cultural change in the financial services sector.

Financial advice has more to offer investors than the distribution of financial products, and the separation of product and advice is the next frontier for the financial planning profession after the reform of conflicted remuneration. This continued connection between financial advice and financial product distribution becomes further entrenched with each development in the law and in the regulation of financial planners generally.

As further reforms will rely on the fundamental concept of 'financial product advice', it will be even more difficult to separate product and advice in the legislation should the terms 'financial planner', 'financial adviser', and 'financial advice' become enshrined in the Corporations Act. It is therefore important for the FSI Final Report to consider whether the ongoing connection between financial products and financial advice in the legislative framework is sustainable or appropriate in the medium-to-long term.

Recommendation 10:
The FSI Final Report should review the definition of 'financial product advice' in the Corporations Act, and consider the benefits and trade-offs of policy options which would separate product and advice at legislative, regulatory, and industry levels.

4.2.3 Enshrinement of the Term 'Financial Planner/Adviser'

To strengthen consumer protection and to continue the journey towards creating a true profession, the law must restrict the term financial planner/adviser to only those that have the highest level of education, competency, ethics, and standards, and are a member of a regulator-approved professional body.

Leaving the use of the term financial planner/adviser unregulated is a significant gap in consumer protection. It leaves trusting consumers open to influence by unlicensed and unqualified individuals who misrepresent themselves as financial planners.

During the Parliamentary Joint Committee (PJC) Inquiry into the collapse of Storm Financial committee acknowledged in their report [5.87]2:

> *…legitimate concerns about the varying competence of a broad range of people able to operate under the same 'financial adviser' or 'financial planner' banner. The licensing system does not currently provide a distinction between advisers on the basis of their qualifications, which is unhelpful for consumers when choosing a financial adviser.*

There is a high level of confusion in the market, and within industry, media, Government and consumers, about who is qualified to provide financial advice in Australia. The current market for financial advice can include financial planners, financial advisers, financial product salespersons, unlicensed rogue operators, and those who misrepresent their products and services as financial advice and/or financial products. Some incorrectly represent themselves to consumers as financial planners without the appropriate, training, licensing, and professional standing and competency required. This significantly erodes consumer protection. The lack of constraint on individuals calling themselves financial planners puts consumers at risk of receiving poor advice from incompetent providers and creates confusion for consumers.

The term financial planner is also increasingly being used in marketing and promotional material by persons who provide non-traditional ancillary services, such as realtors, stockbrokers, life insurance agents or brokers, mortgage brokers, property brokers, sales agents of various investment vehicles, accountants, and unlicensed individuals.

The current mis-use of the terms financial planner and financial adviser impacts on consumer trust and confidence in the profession, as a result of the actions of incompetent providers who should not have the legal capacity to call themselves financial planners.

This position is supported by an article in the Canberra Law Review (2011)[6]:

> *Trust and confidence in a professional industry is built upon the belief that the professionals working in that industry have special training and knowledge, high standards of accountability and a belief that advice given is in the best interest of the client seeking expert knowledge. Without adequate training and specialist knowledge, it is difficult to see how any of the previously mentioned factors can be fulfilled, as good advice cannot be given by an adviser whom has not been properly trained and lacks specialist knowledge. In order to restore trust and confidence in the financial advice industry, these issues must be addressed.*
>
> *Furthermore, a closely related matter to this issue that is yet to be implemented is the restriction of the use of the term 'financial adviser' and 'financial planner' to people that have membership to the appropriate professional standards board. Until these issues have been addressed, there will remain significant deficiencies in the implementation of the Ripoll Inquiry recommendations, which will hinder progress in restoring consumer trust and confidence in the financial advice industry.*

Australians deserve the best possible advice from the most qualified practitioners, and these practitioners should be bound by a professional framework that goes beyond the law. This framework should require adherence to standards of conduct, ethics and education which are specifically tailored to the provision of quality financial planning advice.

In restricting the use of the term financial planner/adviser, the FPA recommends that the criteria for using the terms financial planner and financial adviser should be linked to membership of a Regulator-approved professional body.

Recommendation: 11
The FSI panel should recommend the term financial planner/adviser is restricted under the Corporations Act to those individuals who are members of an ASIC approved/recognised professional body.

4.2.4 Affordability of financial advice

The cost of financial advice limits the capability of all users of the financial system to participate on a level playing field. For those who are compelled through superannuation to participate in the financial system, personal financial advice forms a way to reduce the informational barriers to participate meaningfully in the system. The educational value unlocked for consumers by the provision of advice is well documented and demonstrates that access to affordable financial advice is a critical element of the financial system, particularly the retirement income system.

[6] Marcus Ap,'The Future of Financial Advice Reforms: Restoring Public Trust and Confidence in Financial Advisers – An Unfinished Puzzle'. (2011) Canberra Law Review Vol. 10, Issue 3, pp 192-193

However, research also shows that the cost of delivering advice in Australia is relatively high due to the strict regulatory regime and the costs of running a financial planning business, limiting the ability for many Australians to access affordable advice. Many consumers, particularly lower income earners do not currently seek professional financial planning advice because of the cost involved and their ability to pay for advice.

This results in unfortunate consequences, especially as the future of the aged pension remains in doubt, and individuals fear that their lack of financial capability might produce poor retirement outcomes. As has been stated above, decision-making is significantly impaired when made under fear and uncertainty, and leave retail investors less sceptical of the advice that they are given.

Investors, as financial citizens, should expect that the financial system can and will alleviate these concerns, and not take advantage of their impaired decision-making. Yet, in the present system the risks are very real. At best, this leaves individuals more susceptible to believe that general advice constitutes a guarantee that a financial product or series of products has been designed with their interests in mind, despite not having received personal advice on the subject.

Personal financial advice provided by a professional financial planner can mitigate the risks attendant on these behavioural vulnerabilities. Yet, consumers are paying for personal financial advice in varying ways that result in different taxation treatments for no apparent public benefit. This variety of treatment appears to be contrary to the ATO's obligation under the Taxpayers Charter it adopted in November 2003 to treat tax payers consistently.

A fee for service arrangement for the preparation of an initial financial plan is stated by the Australian Taxation Office to be not tax deductible under section 8-1 of the Income Tax Assessment Act 1997. This is because the ATO views this not to be an expense incurred in producing assessable income. Tax Determination TD 95/60 differentiates between a fee for drawing up a financial plan and a management fee or annual retainer fee. The determination states that the ATO is of the opinion that the expense incurred in drawing up a plan is not deductible for income tax purposes because the expenditure is not incurred in the course of gaining or producing assessable income but rather is an expense that is associated with putting the income earning investments in place.

Furthermore, Taxation Ruling IT39 states that where expenditure is incurred in 'servicing an investment portfolio' it should properly be regarded as being incurred in relation to the management of income producing investments and thus as having an intrinsically revenue character.

The inability to claim a tax deduction for the fees associated with an initial financial plan acts as a disincentive for people to take the first step towards organising their finances on a strategic basis. This has widespread cost implications, both for the individuals and the community as a whole. Encouraging the use of professional financial planning advice results in a more financially literate community, a more even playing field for participants in the financial system, and greater use of financial intermediaries who owe professional duties to clients and to the system itself.

Recommendation 12:
The FSI panel should consider recommending options for making financial advice more affordable such as allowing consumers to claim the cost of the upfront advice as an income tax deduction.

4.2.5 – Banning individuals from managing financial services businesses

The FPA supports the principle that ASIC should have the power, or should at least be able to apply to a Court, to ban individuals from managing financial services businesses if their conduct has been so egregious that they are banned from personally providing financial services. In our view, ban fills an important regulatory gap at the top end of the enforcement pyramid.

There is a question of whether there should be discretion attached to this power, or whether all individuals who are banned from directly providing financial services should also be banned from managing financial services businesses. Furthermore, the Panel ought to consider whether the power to suspend an individual from managing financial services businesses would be an effective regulatory tool.

Recommendation 13:
While we support the principle that ASIC should have powers in relation to banning individuals from managing financial services businesses, the FSI Panel should investigate how these powers fit within ASIC's existing enforcement toolkit.

4.2.6 – Improving efficiency through online advice services

One of the most impressive developments in the consumer experience of financial services in Australia has been the banking industry's adoption of online services. While there will always be a place for face-to-face personal financial advice, and that place will always be determined by the client's needs and expectations, facilitating online financial advice services is a necessary and positive step for the financial planning profession. Lowering the cost of financial advice improves financial inclusion and the financial literacy of Australians, while providing online services allows those who live in rural, regional, and remote areas to access financial advice with greater ease.

We envision that the cost of advice can be reduced by using technology to; collect information from the client, verify the client's identity, distribute information regarding products and advice services to the client, and provide the advice itself to the client in the form that she would prefer to receive it. The largest barrier to this vision becoming a reality are the regulatory settings which require 'wet signatures' and other hard-copy verification and provision of certain documents and processes.

For example, the following processes all incorporate paper-based processes which are mandatory as a result of regulation:

- AML/CTF verification information
- Third party access forms
- Validating past superannuation contributions history from the ATO
- Confirming product fees and premiums outside of the PDS
- Requiring SoAs to be provided 'in writing'

Many of the changes which would make 'wet signature' processes more efficient in financial advice could also be applied to the superannuation sector.

Furthermore, the financial services sector is highly sensitive to changes (or, as the case is more frequently, a failure to embrace technological change) in privacy laws. The recent transition to the Australian Privacy Principles has contemplated many of the changes in technology that have occurred, and is quite technology-neutral in its principles-based approach to privacy issues. It is important that Australia's privacy laws keep pace with technology, and that they appropriately consider how the financial services sector is affected by changes in technology and in regulatory settings for privacy.

Recommendation 14:
The FSI Final Report should consider how verification and other regulatory processes can be moved to digital services. The Panel should consider using the existing **my.gov** framework for online identity verification.

4.2.7 – Vertical integration and financial advice

The Interim Report notes that;

- The most successful platforms have been getting larger relative to their competitors. The five largest platform providers now hold almost 80 per cent of primary planner relationships.
- Financial planners have consolidated or moved in-house to work directly for wealth management institutions.
- Vertical integration is increasing, with the major banks and AMP at the forefront of this trend, combining advice, platforms and fund management into single businesses. Other wealth managers, including Macquarie Group, IOOF and Perpetual, have replicated this strategy to varying degrees.[7]

It is important to be precise about the risks and benefits of vertical integration when considering how it has affected consumer outcomes, or any other aspect of the financial services sector in Australia. The FPA is agnostic regarding business models, as we believe that the fundamental culture of client-centric professionalism is the most important factor, regardless of how the practice is aligned or structured.

From a structural analysis of vertical integration, the FPA's view is that the vertically integrated model can potentially pose particular institutional and systemic risks to the market for financial products and financial advice. These include:

- Cross-subsidising advice: Vertically integrated models which include financial advice networks provide an incentive to cross-subsidise costs in the financial advice space through product sales, and therefore places a systemic bias in favour of financial advice which recommends the related party product issuer's products.
- Cultural pressure: Where different parts of a vertically integrated business interact, the norms and culture of different areas of the business tend to influence each other, and sales-oriented cultures may erode the professional values expected of a financial planning business.

[7] 2-38, references omitted

- Public perception of advice: Where product issuers, research houses, and financial advisers are too closely related, and especially where financial planning divisions are referred to as "distribution" businesses, vertical integration can raise the public perception that the financial planning services are fundamentally conflicted.
- Cross-selling of product: Vertically integrated models which include a variety of forms of financial product advice across several parts of the business can create a risk that non-advised cross-selling of financial products may occur. This may not always pose a consumer detriment or create an inefficient market, but can be constructed in a way that poses these risks.

However, there are benefits to vertical integration. These include:

- Economies of scale: The compliance work undertaken by AFS licensees is expensive and time-consuming. Vertical integration allows financial planning practices to reduce their costs by giving licensee functions to a dedicated, professional compliance team within another institution. Importantly, this arrangement can be created at arm's length in order to reduce real or perceived conflicts of interest.
- Less institutional risk: The size and wealth of many vertically integrated financial services businesses in Australia give consumers some degree of confidence in the advice they are given, as well as assurance that there are adequate resources to cover the risk of mismanagement or poor advice.
- Cultural pressure: Just as vertical integration can promote poor compliance cultures and a sales-oriented corporate culture, it can also help financial services to embrace professionalism and client-focus and establish norms across an entire corporate entity.

In addition to considering the benefits and trade-offs of vertical integration in the financial planning profession, it is also important to be clear about the definition of vertical integration and how differing degrees of integration affect consumer outcomes. One key problem identified by the FPA's consultation with members on the Interim Report is the difficulty of measuring the costs of each step in the chain of a vertically integrated model. It can be unclear where the economies of scale are being achieved, and where processes are inefficient. This can also affect consumer outcomes and the effectiveness of disclosure for retail investors, e.g. where intra-fund advice costs are not specifically disclosed by the superannuation fund and form part of the fund's management and administration fees.

Recommendation 15:
Before the Panel forms a definite view on the costs and benefits of vertical integration of wealth management, it would benefit the Panel to investigate the various forms of vertical integration in the Australian financial services sector, and make recommendations to improve the cost transparency of these structures.

4.3 – Product regulation and product issuer regulation

The conceptual framework of Australia regulation and other regulatory processes and the efficient capital markets hypothesis as fundamental principles. One detrimental consequence of our reliance on disclosure is that this approach filters into our regulatory framework, so institutions which address information asymmetry have faced unfair regulatory pressure and public condemnation. The financial planning profession is an important gatekeeper in the financial system, but it is one of many gatekeepers which are responsible for the integrity of the financial system.

As our first-round submission argued, Australia needs a coherent gatekeeper theory to guide the financial system into a post-disclosure regulatory environment. Gatekeepers need to be supported by appropriate and adapted regulation, professional ethics with self-regulatory bodies to establish and administer them, and broader statutory duties which require professional judgment in order to satisfy.

The Interim Report has suggested several policy options which involve positive obligations for product issuers. These options include conduct regulation for product issuers, as well as direct regulation of financial products. Our view is that the Panel should form a coherent conceptual framework for regulating product issuers as gatekeepers, and then recommend statutory duties that are consistent with that framework. Whether those options are suitable should depend upon the outcome of that investigation.

This is particularly true if the Panel is to recommend new statutory duties for financial product issuers. Without this framework, the key concepts that permit a principles-based approach will be absent, and the obligations will reduce down to documentary compliance. For example, there is a danger that the appropriation of the term “best interests” in the financial advice sector automatically infers that any gatekeeper who is required to consider the interests of the end user will have to satisfy a similar process to 961B of the Corporations Act. Considering the suitability of a product for the end user does not necessarily imply that the gatekeeper must have the circumstances of a particular client, but a conceptual framework must exist in order to form principled, professional judgments about product suitability.

Furthermore, without changes in the conceptual framework surrounding product issuers, the current disclosure-based framework will be the primary influence on this duty. Product regulation that exists under the assumptions of a disclosure-based regulatory regime will continue to place undue emphasis on the advice stage, as well as present undue risk to the financial system by introducing financial products that require complicated ratings and research in order to evaluate. Something more than disclosure is required if the financial system is to protect itself against toxic financial products.

There are arguments against gatekeeper-based regulatory frameworks. These arguments tend to rely on; the perception of an unfair distribution of responsibility; the costs, ambiguities, and risks of principle-based regulation; and the perception that regulators and government are targeting profitable business models and stifling innovation. However, the Final Report should endorse a compromise position that fairly apportions responsibility to various sectors of the financial system for the particular risks that sector poses to consumers and to the financial system itself.

For example, it is difficult to argue that product issuers would be able to understand and cater to consumer demand in a market without having a general sense of what the consumer's interests might be. However, there should be a clear distinction between a guarantee of the suitability and effectiveness of the product for an individual, and a guarantee that minimum standards of conduct and design apply to the product, and has been designed for consumers with particular needs in mind. Commercial realities will rarely admit black-and-white distinctions, but professional judgment can and should be applied in the relevant circumstances.

Regulating to mandate product features, or to make certain product features the default option, is a highly invasive regulatory power that should only be adopted where the need or risk is greatest. Unlike gatekeeper regulation which mandates standards and conduct, these powers have the potential to costs and outcomes, and stifle product innovation. The minimum drawdown requirement for pension products is a good example of this problem, as some interference in the market is necessary to prevent tax arbitrage, but the design of the drawdown prevents longevity risk products from being competitive.

These powers should be reserved for where compulsory participation in the financial system exists, i.e. superannuation and insurance inside superannuation. If the Final Report were to recommend further compulsory or default financial products, and define the purpose the superannuation regime as solely the objective of establishing a universal retirement income solution for Australians, then the regulation of default terms and features in the appropriate products may be warranted.

Recommendation 16:
The Final Report should review whether the existing product licencing conditions are sufficient to regulate the conduct of product issuers. If the Panel are of the view that these conditions are insufficient, the Report should recommend that statutory duties to the consumer and/or to protect the stability and transparency of the Australian financial system should be implemented.

Recommendation 17:
The Final Report should not recommend mandatory or default financial products. Any future consideration for mandatory or default financial products should only be implemented where there exists compulsory participation (such as SG) in the financial system, or where the risk and consequences of harm is so great that prudential regulation is warranted.

5 – REGULATORY ARCHITECTURE

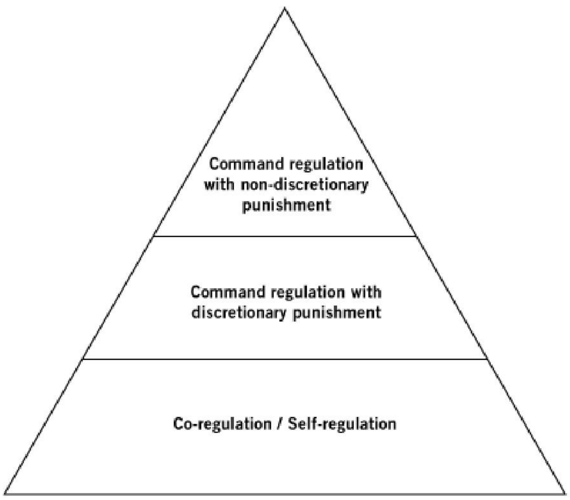
5.1 – Self-regulation and co-regulation in the Australian financial service sector

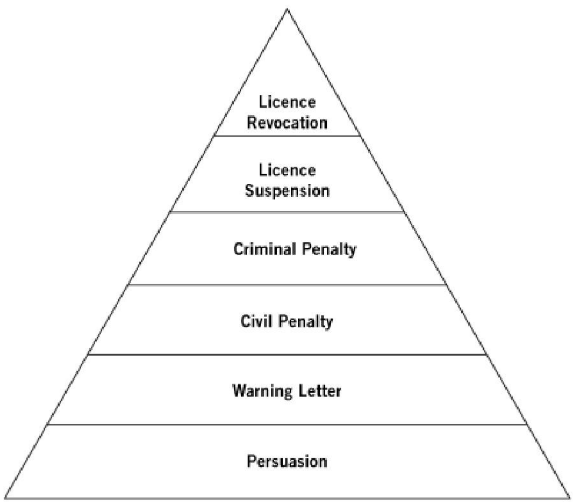
There is a fundamental need to recognise, in the regulatory design of the Australian financial system, the role professional bodies can play in maximising the capabilities of the system as a whole, and to improve overall consumer protection. Professional obligations serve to assist Government in protecting consumers by raising the bar of accountability, ethical obligations and education of its members, beyond the requirements of the law.

Professional obligations complement and reinforce the legal obligations regulated by ASIC. It is in the public interest for the Government to encourage and support the adherence to professional obligation through effective and efficient regulatory design which facilitates co-regulation, restricts the use of the terms financial planner/adviser and the requires membership of a regulator-prescribed professional body, particularly in the financial services sector which influences the financial wellbeing of all Australians.

Many submissions provided by consumers to the Senate Inquiry into the Performance of ASIC indicated that ASIC was unable to assist them in relation to their complaint. In part, this is due to the inability of ASIC to dedicate resources to minor regulatory offences. This highlights the misalignment between the consumer perception of the role ASIC should play in assisting them when things go wrong, versus what ASIC can actually deliver.

This is where the role of professional bodies is most important. The following diagrams demonstrate the 'regulatory pyramid' approach to regulatory design.[8]





[8] Ayres and Braithwaite, 1992, p 35

Regulatory design is not just about responding to complaints or acting when things go wrong. Setting standards, education, and guidance, among other regulatory components, are vital parts of effective regulatory design. These base sections of the pyramid offer a vital avenue for identifying, monitoring and responding to emerging trends of market behavior and practice that impact on consumers.

Setting performance measures concerning the bottom half of the regulatory pyramid will help ASIC to appropriately resource allocation decisions between its current focus on high end enforcement activity versus capacity building to complement and encourage the development of relationships with professional bodies at the lower tiers of the pyramid.

In the medium to long term, investment in these systems of regulatory power is likely to prove far more cost effective and be a more responsive mechanism for consumer protection.

The best solution for implementing this regulatory design is a system which reflects dynamic interaction between the legal requirements imposed by Government, compliance practices imposed by licensees, and the expectation of professional participants as codified in professional obligations. This model is based on the ‘best practice’ Accountable Governance approaches proposed by O’Brien (2010) and Sanders (2010) and also the Australian government’s Office of Best Practice Regulation Handbook 2007, all of which emphasise the regulatory benefits of the separation of complementary roles between the Regulator, the regulated, and the professional bodies.

Notwithstanding the need for professional bodies to take greater responsibility for the regulation of the financial services sector in Australia, ASIC and the federal Government continue to play a vital role. For example, the higher tiers of the regulatory pyramid require supervision and enforcement on a scale that is unfeasible for professional bodies. Co-regulation between ASIC and approved professional associations allows ASIC to focus on the higher tiers of the regulatory pyramid, and also opens up new opportunities to improve the financial system.

Professional bodies can work together with ASIC to assist the Regulator in establishing and maintaining a national register of AFS Licensees and their Authorised Representatives. At the moment, consumers do not have access to a register of all AFS Licensees and their Authorised Representatives (including employee representatives), nor a register of banned operators. ASIC only offers the capacity to search the status of particular providers. Access to a list of all AFS Licensees and Authorised Representatives with their licence status (e.g. banned or compliant; enforceable undertaking) and their professional affiliation would assist consumers in researching and selecting appropriate providers.

The collaboration between ASIC and professional bodies on a national registry can also facilitate the recording and harmonisation of enforcement measures. For example, in the past some individuals banned by the FPA have remained licensed by ASIC, either as an Authorised Representative or a licensee. Such an approach would improve consumer protection and ensure inappropriate behaviour is identified and addressed through a tripartite mechanism of regulatory, licensee, and professional procedures, and recorded on the registry in a timely manner.

Lastly, the closer collaboration between ASIC and professional bodies on a co-regulatory basis permits joint policy development and would help to identify future areas for reform. For example, collaboration between ASIC and professional bodies would help to identify weaknesses in key financial regulatory concepts, such as the distinction between retail and sophisticated investors. Co-regulation through joint policy development would facilitate closer attention to how this legal distinction influences practical outcomes for the profession and for consumers.

In order to facilitate co-regulation into the regulatory framework, ASIC needs the power to approve professional associations, as well as criteria and obligations for facilitating and maintaining the co-regulatory relationship between ASIC and approved professional associations.

There are risks involved with adopting co-regulatory and self-regulatory structures. Some of those, such as the necessity of adequate funding for supervision and enforcement, are inherent in the responsive regulatory model but are exacerbated by the smaller scale and limited resources of professional bodies. Other risks which affect the effectiveness of regulation, such as the expertise of the regulators, can be improved by adopting a self-regulatory or co-regulatory model.

Some of the risks which are quite specific to self-regulation and co-regulators include:

- <u>Weak incentives for complaints:</u> Unless the self/co-regulator offers a compensation scheme, it will have to rely on direct supervision and industry self-reporting to a greater extent than a regulator whose activity can offer direct compensation to victims of misconduct. This risk may be mitigated by self/co-regulators who make public enforcement decisions that may aid class actions or other litigation.
- <u>Enforcement pyramid:</u> State-backed regulators often have greater access to strong enforcement tools, which leave self/co-regulators with an enforcement gap between low-level actions (e.g. guidance, small penalties, and education) and license revocation. Information-sharing may allow the self/co-regulator to perform monitoring functions which feed into the state regulator's enforcement division.
- <u>Regulatory capture:</u> While this risk is present in all forms of regulation, it is a particularly difficult risk to manage for a self/co-regulator. Part of the value proposition and the legitimacy of the self/co-regulator approach is that the regulated members have a greater connection to the regulatory processes that govern them. This connection, if not managed correctly, can corrupt the regulator and/or give the public perception of regulatory capture.

There are further risks which are specific to the particular design of the system if adopted: Balancing efficiency against effectiveness in the self/co-regulatory space is difficult. Allowing for multiple regulators over the same regulatory space could promote a race to the bottom on standards, whereas a single self/co-regulator can be seen as effectively another state regulator. Allowing for a regulatory body over several layers of financial advice chain can promote efficiency and overarching ethical standards, but can also entrench vertical integration and can over-regulate or under-regulate certain sectors. However, having a self/co-regulator in every regulatory space in the sector can create significant red tape and exacerbate the politics of financial services regulation.[9]

Recommendation 18:
The FSI panel should recommend the development and implementation of a co-regulatory model, which recognises and facilitates the role of 'approved' professional bodies within the financial advice industry.

[9] The realisation of many of these risks can be observed through a recent research paper on the self-regulation of investment bankers in the United States of America; Andrew F Tuch, 'The Self-Regulation of Investment Bankers' (2014) *George Washington Law Review* (forthcoming), available at <http://ssrn.com/abstract=2432601>

APPENDIX A – LIST OF RECOMMENDATIONS

Recommendation 1:
The Final Report of the FSI should explore the benefits and trade-offs of expanding the list of default funds in industry awards (allowing all MySuper funds to be eligible) and/or an auction system, as well as canvassing other alternatives.

Recommendation 2:
The Final Report should consider how future superannuation policy decisions should be determined. This could include the option of recommending the establishment of an independent board/institution to assess whether the superannuation system is meeting its objectives. The functions of this board/institution could be to perform periodic reviews of the superannuation system's performance and to recommend policy changes to government.

Recommendation 3:
Before deciding on any action on leverage in SMSFs, the FSI Panel should recommend a review into the use of leverage in the SMSF sector in order to identify what, if any, vulnerabilities exist as a result of borrowing inside SMSFs. This recommendation is consistent with the Cooper Report recommendation to review gearing in superannuation after two years.

Recommendation 4:
The FSI Panel should address longevity risk by recommending options that improve the availability and quality of financial advice, and remove barriers to product innovation.

Recommendation 5:
The FSI Panel should recommend that any changes to superannuation policy settings in the pension phase in relation to longevity risk must articulate the interaction of that policy with the age pension.

Recommendation 6:
The FSI Panel should assess the suitability of the minimum drawdown requirement in its current form, with a view to consulting on and recommending a principles-based approach to tax-exempt status for incomes on pension products.

Recommendation 7:
The FSI panel should recommend standardised 'simple' language and metrics to describe complex concepts for investors – for example a standardised definition of balanced portfolio.

Recommendation 8:
The FSI Panel should review the definition of wholesale/sophisticated investor to determine the appropriate thresholds for protection and disclosure offered to that client.

Recommendation 9:
The FSI Final Report should recommend re-naming general advice as 'product or general information', and also recommend that the terms 'financial advice' and 'financial product advice' should only apply to personal advice as defined by the Corporations Act.

Recommendation 10:
The FSI Final Report should review the definition of 'financial product advice' in the Corporations Act, and consider the benefits and trade-offs of policy options which would separate product and advice at legislative, regulatory, and industry levels.

Recommendation: 11
The FSI panel should recommend the term financial planner/adviser is restricted under the Corporations Act to those individuals who are members of an ASIC approved/recognised professional body.

Recommendation 12:
The FSI panel should consider recommending options for making financial advice more affordable such as allowing consumers to claim the cost of the upfront advice as an income tax deduction.

Recommendation 13:
While we support the principle that ASIC should have powers in relation to banning individuals from managing financial services businesses, the FSI Panel should investigate how these powers fit within ASIC's existing enforcement toolkit.

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The FSI Final Report should consider how verification and other regulatory processes can be moved to digital services. The Panel should consider using the existing [my.gov](my.gov) framework for online identity verification.

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