

ASH ST.



Challenger Financial Standard Technical Forum

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Ash St. | Legal & Advisory



Journey to a Professional Timeline



Pre 1970

- Traditional banking products, limited funds management, regulated market

Post 1970

- **De-regulation AUD floated, growth in size and liquidity of securities markets**

1983

- Tax changes leading to mandatory retirement savings more complex products emerge

1986

- **Super into employment awards**

1990

- Privatisation – Qantas, CBA, Telstra
- Demutualisation – AMP, NRMA Insurance
- Banks commence expanding into wealth management

1991

- **Tax Penalties where employer contribution not made**
- Manufacturers looked to “Financial Advisers” to sell financial products
- **Commission based culture (FAs were bankers brokers, accountants & insurance advisers)**

Journey to a Professional Timeline



1997

- Wallis Inquiry – consistent and comprehensive disclosure
- CLERP 6 – Corporate Law Economic Reform
 - Regulated firm not individuals
 - Insurance, super, securities regulated together (despite having different characteristics)
- Did not contemplate:
 - Conflicts between product issuer and financial advisers
 - Access to wholesale markets and complex products not restricted

1998

- **ASIC was born**



Journey to a Professional Timeline



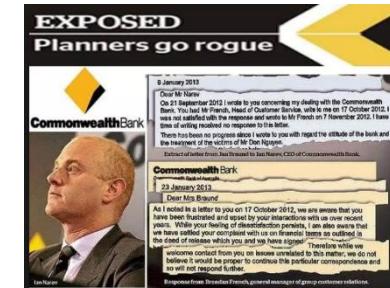
2008

- Storm scandal
 - Template advice
 - Margin Loans
 - Index Funds
 - \$830m in losses



2010

- Commonwealth Financial Planning Scandal
 - High Risk Products
 - Switching without permission
 - Forging signatures
 - \$20m initial compensation plus further Open Advice Review Program \$37.6m



Journey to a Professional Timeline



2012

- FoFA Reforms
- Best interests obligation
- Ban on conflicted remuneration
 - consumer agreement to ongoing fees
 - but grandfathered commissions

2014

- Murray Inquiry
- Various recommendations, notably:
 - a number of recommendations concerning super and independence of super board members
 - Financial Regulator Assessment Board
 - product design and distribution obligation
 - education for financial advisers

Journey to a Professional Timeline



2015

- ASIC Financial Adviser Register

2017

- Financial Advice Standards and Ethics Authority (FASEA)
 - Uplift profession – education, supervision
 - Code of ethics
 - Subscribe by 1 January 2020

2019

- New qualification requirements
 - **New:** Degree, exam, supervised, work and training by 1 January 2019
 - Existing: By 1 January 2024

Royal Commission



1. Profit and Reward driving poor conduct and outcomes for customers

"First, in almost every case, the conduct in issue was driven not only by the relevant entity's pursuit of profit but also by individuals pursuit of gain, whether in the form or remuneration for the individual or profit for the individual's business"

2. Imbalance of power and knowledge

"...entities and individuals acted in the ways they did because they could"

3. Conflict of interest between the customer and the interests of the service or product provider

"self interest will almost always trump duty"

- Self-interest is a human trait E.g.. Hostage negotiator example
- Hit Refresh: The Quest to Rediscover Microsoft's Soul and Imagine a Better Future Example – turning self-interest something a deeper connection with the company and its customers

4. No accountability

"financial services entities that broke the law were not properly held to account"



4 Key Questions



1. How can the law be simplified so that its intent is met?
 - Remove Exemptions
 - Legislation should identify what fundamental norms of behaviour are being pursued E.g. mortgage brokers best interest duty
2. How should the approach to conflicts of interest and conflicts between duty and interest change?
 - Where possible conflicts of interest between duty and interest should be removed
3. What can be done to improve compliance and the effectiveness of the regulators?
 - Improving regulators and compliance
4. What more can be done to achieve effective leadership, good governance and appropriate culture so that financial services entities obey the basic norms of behaviour that underpin the proper regulation of the financial services industry?



Financial Advice Sector Issues



Issue #1 | Fees for No Service – “Endemic”

- *Satisfactory steps must be taken.*
- “The amounts of money that just ‘fell into the pocket’ of so many large and sophisticated financial entities, the number of times it happened, and the many years over which it happened, shows that it cannot be swept aside as no more than bumbling incompetence of the product of poor computer systems.”

Key learnings

- Charging for what you do not do, is wrong.
- Ongoing fee arrangements give the adviser a financial advantage.
- Licensees did not prevent having more customers on their books than they could manage.
- Services often were and still are, poorly defined. Used to be performance, now strategic advice and reassurance. (Michael Wright BT Financial Advice).
- Fees often were and still are charged invisibly.
- Even after FOFA, some years before advisers were required to bring ongoing fees to their clients' attention.
- A culture that relies on automatic periodic payments from customers.



Financial Advice Sector Issues

Delays in taking action to remediate

- Lack of prioritisation
- Reactive
- Legalistic

Q!

What role can technicians play to support fees for service? What is the value of strategic/technical advice?

Recommendation 2.1

- Fees renewed annually, in writing and with express consent from client.

Q!

What will be the impact of a reduction in ongoing fees?

Financial Advice Sector Issues



Issue #2 | Poor/Inappropriate Advice Due to Conflicts

- *Something needs to be done.*
- Other professionals do not have such faith it can be managed.
- Hayne:
 - Mentioned disclosure of APL
 - Unrestricted vs restricted advisers in the UK
- Recommendation 2.2: Disclosure of lack of independence
- Recommendation 2.3: Review best interests duty
- Recommendation 2.4: Remove grandfathering
- Recommendation 2.5: Decrease cap on life commission
(potential for total ban)

Q!

Do other professions have similar conflicts?

Q!

Do the recommendations address the conflict issue adequately?

Financial Advice Sector Issues



Issue #3 | Lack of Disciplinary System

- Fragmented (i.e. different associations AFA, FPA etc) and inadequately protecting consumers
- Potential for further ASIC guidance on audits and consequence management of financial advisers
- ‘Serious compliance concerns’ may not warrant a significant breach report but could trigger further action by ASIC
- Recommendation 2.7 – Reference checking and information sharing
- Recommendation 2.8 – Reporting compliance concerns
- Recommendation 2.9 – Misconduct by financial advisers: reasonable steps to determine nature and extent of misconduct and tell affected clients
- Recommendation 2.10 – A new centralised disciplinary body

Q!

Who is obligated to report serious compliance issues (i.e. all AFSL Holders?) What is a serious compliance issue?

Financial Advice Sector Issues



Issue #4 | Related Superannuation Issues/Managed Investment Schemes

- Structural conflicts (dual regulated entities) – Recommendation 3.1 – No other role or office (trustee of an RSE) – Trustees of RSEs should no longer be permitted to be Reporting Entities of MIS
- Structural conflicts (product and manufacturer) – “I am not persuaded that a case has been made for imposing some form of structural separation on RSEs”
- Fees – Recommendation 3.2 – restricts advice fees on MySuper accounts, Recommendation 3.3 – consent for deducting fees on choice funds
- No hawking of superannuation products (Recommendation 3.4)

Financial Advice Sector Issues



Issue #5 | Other Key Take-Aways to be Aware of

Governance & Culture:

- Governance refers to the entirety of structures and processes by which an entity is run. By shaping how the business is run, governance shapes culture.
- In looking at culture, every entity must consider how it manages regulatory, compliance and conduct risks.

Remuneration Reform:

- Do compensation, incentive or remuneration practices recognise and penalise poor conduct? How does the remuneration framework apply when there are poor risk outcomes? Do senior managers and above feel the sting?
- Reviewing design includes reviewing how the rem system is being applied in practice.

Financial Advice Sector Issues



Issue #5 | Other Key Take-Aways to be Aware of (cont.)

Increased Regulation & Enforcement:

- Compliance Incident/Breach Identification viewed as inadequate and “piecemeal”
- Significant breaches not lodged “as soon as reasonably practicable” and in any event in compliance with requirement to lodge a significant breach within 10 business days
- Taking too long to form a decision on a significant breach
- How the decision [to report a breach] is made, who is involved and the process followed in assessment of breaches are critical aspects of the breach reporting framework which should
- Remediation that takes too long
- Licensees are not acting ‘efficiently, honestly and fairly’

Accountability:

- Accountability is centrally important to any consideration of culture
- Common theme in issues revealed in RC
- Accountability determines what consequences follow when things go wrong



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always going the extra mile to unlock value

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and finding solutions

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with the option of flexible billing arrangements

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thinking ahead so we can be prepared and ready to engage and maintain momentum

Embrace 'managing the project'
as well as just simply doing the work in front of us

Company Overview



- Ash St. is a professional services firm that exists to provide businesses with **Legal and Advisory solutions** to help inform and solve complex business problems.
- **Established in October 2013**, Ash St. was formed with a view to offering clients a ‘New Way’ in professional services. With this foresight, we apply multiple disciplines, Legal, Tax and Management Consulting, to ensure our clients’ evolving needs are met, no matter how complex.
- Our team of **senior lawyers (most Directors being former partners of top tier law firms)** and consultants have decades of experience in mergers & acquisitions, corporate law, finance, governance/compliance/regulatory, IT contracting, projects, real property and employment law. We also cater to start-up and scale-up companies looking to raise capital through to listing on the ASX. The firm’s culture is based on providing our clients technical yet pragmatic advice, with direct access to our commercially astute senior lawyers and consultants.
- Our reach is **global**, with some of our clients based in the UK, United States, Canada, Singapore, China and Hong Kong. Our unique approach and commercial acumen is why our clients keep coming back to us.
- We have a **strategic partnership** with **GRC Solutions**, a multi award winning RegTech company, leaders in Governance, Risk and Compliance training. Our strategic partnership allows us to provide centralised and agile legal, consulting, governance and compliance services to the benefit of our clients.
- Ash St. is **one of several companies in the CPS Group**. CPS was formed in 1970 as a software company that came to build and operate technology infrastructure for government and commerce around the world. Today the Group includes companies in professional services, superannuation, temperature monitoring solutions, digital identity management and professional training.
- Ash St. envisions a future where it can apply its “**Solutions Filter**” to client’s business risk issues and offer solutions that includes these group assets or recommend that additional assets be acquired or integrated where necessary. With a combination of the right advice/solution, technology architecture, digital assets, supporting services and economic capital we believe we can provide original and innovative solutions at scale to a global market.



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THANK YOU

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