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Advice and Investment Branch
Retirement, Advice and Investment Division
Treasury
Langton Crescent
PARKES ACT 2066
By email: AdviceReview@treasury.gov.au

Infocus submission – Quality of Advice Review (QOAR)

Infocus Wealth Management Limited (Infocus), an unlisted public company, is a national wealth management organisation established in 1994 on Queensland's Sunshine Coast.

Infocus directly employs over 70 people and indirectly employs a further 500 people across Australia that provide quality financial advisory solutions to over 18,000 Australians via an advisory network of nearly 200 highly experienced and qualified financial advisers, mortgage brokers and accountants. Infocus offers a diverse range of services including strategic financial advice, financial product advice, personal and business advisory, credit advisory, investment management and tax advisory. Infocus also owns and operates the integrated wealth technology solution Platformplus which is used within Infocus, across our network and by a broad array of external Australian Financial Services licensees.

Introduction

We thank Treasury for the opportunity to provide feedback as part of the Quality of Advice Review (QOAR). We support the objective of the QOAR to ensure Australian retail consumers can access much-needed financial advice that is both high in quality and affordable.

Infocus has contributed to the QOAR via a licensee joint submission.

Without re-stating the key points raised in the licensee joint submission, Infocus is seeking to highlight two elements of the current system that we believe need to be considered to elicit the best outcome for the future success of the financial advisory profession, for consumers, for regulators, for Government and all stakeholders.

We seek to highlight the nature of the current laws and regulations and the impossible juxtaposition created by the motivation to adopt the 'vibe' (to quote Stephen Glenfield, former CEO of FASEA) of a professional principles-based ethical code (the FASEA Code) with the hard-coded legislative requirements of the Corporations Act, and particularly ASIC's enforcement of (and AFCA's approach to) licensees' requirement to evidence their compliance with all the elements required to achieve safe harbour under the provisions in s961B(2).

In saying the above, we absolutely recognise the vital importance of ensuring consumers have the ability to access advice in the manner of their choosing and that adequate mechanisms are in place to foster trust and confidence, and to ensure that advice received is professional, considered, objective and unquestionably in their best interests.

When ASIC issues a s33 notice or a s912C notice to a licensee and subsequently conducts and investigation, and when AFCA, through their various stages of case management consider the efficacy of advice provided, they (and we as a licensee) need to be able to rely on the evidence provide at each step along the advice pathway to prove or otherwise that the advice in question meets the requirements of each of the steps of the safe harbour provisions.

The key point we wish to raise is that AFCA, in their determinations and ruling on financial claims and complaints, are currently applying a 'fairness rule' which is not instructed by statute, case law or legal precedent. The AFCA 'fairness rule' requires a higher evidentiary burden than what is necessary to meet their statutory and regulatory obligations. The situation created by this current position is that a financial adviser can fail AFCAs 'fairness rule' and be found at fault for otherwise appropriate advice, even though they can prove adherence to each of their statutory and regulatory obligations.

The outcome of this evidentiary burden is the creation of large, legalistic, cumbersome difficult to understand advice documents which complicate and slow the advice process. Further, the need to meet this evidentiary burden adds immeasurable cost to the advice process that is ultimately borne by the end consumer who ends up receiving documents containing hundreds of pages of information and disclosure (between the SOA/ROA, FSG, PDSs, FDSs and multiple fee consent and other forms).

These large documents are at best questionable in their ability to provide beneficial additional benefit or protection to consumers, even if they are read and understood.

Infocus has previously provided a submission on the proposed Compensation Scheme of Last Resort (CSOLR) and how this will further drive costs to an unsustainable level within the profession. Our position of the CSOLR remains unchanged and we provide a copy of this submission at the end of this submission.

The addition of CSOLR costs, along with AFCA membership, rising Professional Indemnity insurance costs, the ASIC levy, and the anticipated levy for the Single Disciplinary Scheme will not help to meet the Government's or ASIC's requirements to promote access to affordable advice for consumers as set out in Consultation Paper 332. Instead, and in line with the Government's desire to see the advice industry be accepted as a viable and sustainable profession, we believe Government, Treasury and regulators need to consider that professional advisory should be considered in the same vein as accountants and lawyers with access to a limited liability scheme.

Conclusion

We are cognisant that the Quality of Advice Review is only a part of the journey (in concert with the Australian Law Reform Commission's review into the Corporations Act and other initiatives by the Government) to not only retain professional, ethical and qualified financial advisers for the future benefit of Australians seeking to protect and grow their wealth and thus reduce their reliance on the transfer system, but to be an exemplar as a profession going forward.

Thank you for the opportunity to provide feedback

We would be happy to discuss this matter further, or to provide additional information if required.

Yours sincerely,

Darren Steinhardt
Managing Director