



GREENSTONE

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Treasury
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Sent to: financialadvice@treasury.gov.au

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Dear sir or madam,

**Submission in response to Treasury Consultation Paper
Delivering Better Financial Outcomes – reducing red tape and other measures**

Background

Greenstone Financial Services Pty Ltd (GFS) is an Australian financial services licensee distributing both life and general insurance products in agreement for specific APRA-regulated life and general insurers.

1 - Our general response to the reforms

GFS generally supports the intent of the package of reforms which are designed to increase accessibility and affordability of personal financial advice by improving the experience for consumers and removing unnecessary regulatory red tape that adds to the cost of advice with no benefit to consumers. As a distributor acting for insurers GFS does not provide any personal advice service. GFS provides general advice and deals in the relevant insurance for the insurers.

Below is GFS's feedback on the proposed reforms.

2 - Need for consideration of all proposed reforms before progressing

In GFS's view, the scope of the final reforms related to Recommendations 1-5 of the Quality of Advice Review can impact on the appropriateness of certain of the current reforms proposed in Tranche 1.

Of note:

- Recommendation 1 provided that the definition of personal advice in the Corporations Act should be broadened so that all financial product advice will be personal advice if it is given to a client in a personal interaction or personalised communication by a provider of advice who has (or whose related body corporate has) information about the client's financial situation or one or more of their objectives or needs.
- Recommendation 2 provided that general advice should continue to be a financial service, but the requirement for a general advice warning to accompany general advice should be removed. This was a change from the interim report.

The other relevant recommendations are:

- Recommendation 3 – Relevant providers;
- Recommendation 4 – Good Advice Duty; and

- Recommendation 5 – Statutory Best Interests Duty.

Different providers may choose or may choose not to undertake a personal advice service depending on how onerous the reforms proposed are (including any risk introduced by them).

Given the above, we query whether finalisation of the Tranche 1 changes should be delayed until the changes proposed regarding recommendations 1-5 have been properly considered and discussed. Once all parties are aware of what the new advice regulatory regime looks like they will then be in a better place to determine what type of authorisation they want to continue with.

A necessary component of making that decision is understanding the full cost of compliance for each of the options. This suite of changes appears to be taking some steps to refine the cost of compliance, in some cases making it less burdensome and in other cases making it more so. We propose that the better approach would be to present the new regime in full and allow all licensees to make that call cognisant of all options and their implications.

That said, it is worth noting that the future risk insurance financial services regime appears likely to principally comprise persons (and their representatives) who can provide one or more of the following types of financial services (however defined) and act in one or more of the specified roles depending on the product type and their relevant business. These need to be considered when reviewing the impact of any reforms:

Type of financial services provided:

- dealing by:
 - applying for, acquiring, varying and/or disposing; and/or
 - arranging for the above to be done by an authorised person.
- personal advice.
- general advice.
- a combination of the above.
- none e.g. referral only, clerks & cashiers service or other service exempt from regime.

Types of role

- issuer of product (e.g. insurer).
- non issuer of product acting on behalf of an issuer (e.g. underwriting agency).
- non issuer of product acting on behalf of the customer/insured (e.g. insurance brokers – noting they may also act in a variety of capacities).
- non issuer of product acting on their own behalf (e.g. in provision of general advice or factual information).

We note that the Quality of Financial Advice Review was required to primarily focus on advice providers and in particular personal advice providers, but other financial services providers not providing personal advice (whether for the client or otherwise) are a significant part of the market and should be considered. Any reforms need to take into account all of these types of providers to ensure there is a clear and even playing field and red tape is appropriately reduced for all providers.

3 - Part 3 – Financial Services Guide

s941C is a retail client FSG exemption which applies where the financial service is *personal advice* and:

- at the time of advice provision the client has not asked for an FSG; and
- the FSG information is available on the FSG provider's website and is readily accessible by the public, up to date and specifies the day on which it was prepared or last updated.

A FSG must still be given on request by a client (see section 943G).

GFS supports this change.

Currently GFS does not provide a personal advice service so this will be of no relevance to it unless the personal advice definition reforms mean that GFS will move into a personal advice model.

Assuming not, GFS would continue to provide a dealing and general advice service on behalf of the product issuers it acts on behalf of.

Currently a product issuer is not required to provide an FSG in relation to its dealing conduct by reason of s941C(2). The current market position is generally that agents of insurers that deal only and provide no form of advice also do not need to provide an FSG.

However, if general advice is provided to a retail client, this can trigger the need to provide an FSG, subject to certain exceptions which are many and complex (e.g. secondary services and public forum type exemptions). It is hoped that the personal advice and general advice reforms in Recommendations 1 and 2 could help reduce this complexity.

Assuming an FSG is required, GFS submits that the change should be further extended in relation to general advice scenarios for essentially the same reasons as the personal advice proposed changes, notably:

- the relief would reduce red tape and costs that ultimately consumers bear;
- the FSG contributes to the time, cost and volume of documents consumer will receive without providing a significant benefit to clients;
- FSGs are not tailored for each client and the content does not change based on the content of the general advice; and
- what is important is that the information is available and accessible to the client at the time personal advice is provided.

Further, we note that the new FSG relief would be of no real use to persons providing personal advice that also:

- deal in insurance – which most do – this typically triggers the obligation to provide an FSG; and/or
- provide general advice - which many do before provision of personal advice - this typically triggers the obligation to provide an FSG,

whether in relation to the same products or other products. Provision of the FSG would be triggered by the provision of these non-personal advice services.

If the view is that the FSG adds little value and what is important is that the information is available and accessible to the client at the time the service is provided, a simple solution could be to amend the relief as follows:

CORPORATIONS ACT 2001 - [941C](#). Situations in which a [Financial Services Guide](#) is not required

Situations in which a Financial Services Guide is not required

~~Personal advice~~ *Information is publicly available on providing entity's website*

(5A) The providing entity does not have to give the client a Financial Services Guide if:

(a) ~~the financial service provided to the client is personal advice; and~~

(ab) at the time the financial service is provided to the client:

- (i) the client has not requested a copy of the Financial Services Guide; and
- (ii) the information that would be required to be in the Financial Services Guide by section 942B or 942C, as the case requires, is available on the providing entity's website; and

- (c) at that time, each web page on which the information is available:
- (i) is readily accessible by the public; and
 - (ii) is up to date and specifies the day on which it was prepared or last updated.

Note: A Financial Services Guide must be given on request by a client (see section 943G).

Consequential amendments should be made to other provisions affected by the above.

4 - Part 4 – Conflicted Remuneration

4.1 - Section 963A Meaning of conflicted remuneration--general and Section 963B Monetary benefit given in certain circumstances not conflicted remuneration and Section 963C(1)(e)

This proposal changes the existing definition to carve out any benefit given to the licensee or representative by a retail client in relation to *financial product advice* provided by the licensee or representative to the client.

GFS supports this change and the consequential changes to the existing exceptions in section 963B no longer needed as a result.

4.2 - Section 963D Benefits for employees etc. of ADIs

This change is based on Recommendation 13.5: Exception for agents or employees of Australian authorised deposit-taking institutions and the Explanatory memorandum states that it removes [our bold]:

“...the exceptions in section 963D of the Corporations Act **and regulation 7.7A.12H of the Corporations Regulations** for benefits given to an agent or employee of an Australian authorised deposit-taking institution for financial product advice about basic banking products, general insurance products or consumer credit insurance.”

We assume changes to the Regulation will be made elsewhere, otherwise that exception will continue to apply.

5 - Part 5 – Insurance Commissions

5.1 - Personal advice issue

The Explanatory Memorandum provides [our bold]:

1.185 *Part 5 of this Schedule of the Bill:*

*-implements recommendations 13.7, 13.8 and 13.9 of the Review by amending the Corporations Act to provide that a person **who provides personal advice** to a retail client about a life risk insurance product, general insurance product or consumer credit insurance and receives a commission in connection with the issue or sale of that product must obtain the client's informed consent before accepting the commission.*

Section 963B refers to benefits given to a licensee or representative who provides “*financial product advice to persons as retail clients*” i.e. it can apply to a general advice service as well as personal advice.

We agree that the consent obligation should only apply to those providing personal advice. On this basis amendments would be required to section 963BB so that the obligation to comply with s963BB only applies in such circumstances.

For example:

963BB Informed consent for certain insurance commissions

(1) Paragraphs 963B(1)(a), (b) and (ba) do not apply to a monetary benefit given in connection with the issue or sale to a retail client of a financial product (the relevant product) that is a general insurance product, a life insurance product, or consumer credit insurance in relation to which the licensee or representative has provided personal advice unless:..."

5.2 - Other issues regarding changes to section 963B(1)(a),(b) and (ba)

These provide that a monetary benefit given to a financial services licensee, or a representative of a financial services licensee, **who provides financial product advice to persons as retail clients** is not conflicted remuneration in the circumstances, provided the new s963BB consent obligation is met.

Section 963B(1)(a) applies if the benefit is given to the licensee or representative solely in relation to a general insurance product.

GFS supports the change in relation to general insurance.

GFS notes that a change appears to also be needed to Regulation REG 7.7A.12G which provides that:

"A benefit is not conflicted remuneration if the benefit is given in relation to a general insurance product. Note: If a benefit is given in relation to a financial product that consists of both general insurance and life risk insurance, the benefit is to be treated as relating to a general insurance product and a life risk insurance product."

This would operate on a stand-alone basis and would not be affected by the changes to section 963B. This means a person could rely on this exception instead of s963B(1)(a) and not have to comply with the consent requirements.

Section 963B(1)(b) applies if each of the following is satisfied in relation to the benefit:

- (i) the benefit is given to the licensee or representative in relation to a life risk insurance product or life risk insurance products;
- (ii) none of the products is a group life policy for members of a superannuation entity (see subsection (2)) or a life policy for a member of a default superannuation fund (see subsection (3));
- (iii) either:
 - (A) the benefit ratio for the benefit is the same for the year in which the product or products are issued as it is for each year in which the product or products are continued; or
 - (B) the benefit ratio requirements and clawback requirements in section 963BA are satisfied in relation to the benefit.

Under section 963AA the concept of what is conflicted remuneration is extended in relation to life risk insurance for non-advice type conduct under regulations 7.7A.11B regarding giving information in relation to life risk insurance products and dealing in life risk insurance products (i.e. no advice scenarios).

Regulations 7.7A.11C and 7.7A.11D set out circumstances in which the above are not conflicted remuneration.

These operate independently of section 963B(1)(b) and could be relied upon in no advice scenarios. As a result, such no advice providers would not need to meet the new consent obligation but those providing any financial product advice would.

5.3 - 963BB Informed consent for certain insurance commissions changes

This provides that the conflicted remuneration carve outs in paragraphs 963B(1)(a), (b) and (ba) do not apply to a monetary benefit given in connection with the issue or sale to a retail client of a financial product (the relevant product) that is a general insurance product, a life insurance product, or consumer credit insurance unless the new consent requirements are met.

Obtaining consent where the licensee or representative *acts for the client* is justified, as an obvious conflict arises in such cases that by its nature would require disclosure of this remuneration and as proposed, informed consent to this.

However, GFS queries the need for such consent in scenarios where the financial services licensee and its representative act on behalf of the product issuer in providing the personal advice services and not on behalf of the retail client. We are assuming the intent is to limit consent to personal advice and not general advice as well – if not we would want to extend the carve out to general advice.

The key point here is that, under this scenario, the licensee and its representative are not acting for the retail client and act in the interests of the insurer in the provision of any personal advice. This is in reality all a retail client needs to know. Anything more in our view unnecessarily adds to the end cost to the consumer for little added benefit. GFS notes that the need for this carve out may be affected by how broad the definition of personal advice will be.

Further, GFS notes that in terms of an even playing field:

- direct insurers that do not outsource distribution won't be affected as the conflicted remuneration prohibition won't apply to premium charged – in contrast direct insurers that outsource distribution generally will be affected as the legislation is currently drafted;
- vertically integrated insurers and their distributors acting on their behalf are affected in terms of commission received by the agent but can adjust costs of distribution internally to their advantage in terms of what is disclosed as an end rate. A non-vertically integrated model cannot do this.

There does not appear to be a public policy rationale for creating different compliance burdens for the differing business models as described in these points.

GFS does not believe consent should be required where the financial services licensee and its representative act on behalf of the product issuer in providing the personal advice and not on behalf of the retail client. Further, consideration should be given to levelling the playing field in terms of the above scenarios.

5.4 - Rate disclosure

Section 963BB(1)(b) (iv) requires that before the consent is given (which must be before the issue or sale of the relevant financial product), the following information must be disclosed to the client: for a life risk insurance product or consumer credit insurance—the rate of the monetary benefit, expressed as a percentage of the policy cost payable for the product.

This does not take account of situations in which the specific commission rate is not ascertainable at that time. The legislation is drafted on the presumption that the commission that will apply for a specific issue of life insurance is always known at the time that the issue occurs and can therefore be easily disclosed as a single specific percentage. For personal advice providers, this may be common. In contrast, general advice models which are predominantly adopted by contact centres, will usually have a varying commission structure which is determined by different variables. These variables are defined by a range of inputs, some of which are known at the time the sale occurs, and some of which are unknown at that point in time or may be difficult to automate in system-generated disclosures. For example, the

outcomes of quality assessments on the agent may result in the loss or some or all of the commission payable to that agent. In these circumstances confirming in explicit terms the specific commission rate that agent will receive will not be possible.

We recommend that the legislation allow for the disclosure of a range of rates payable where the specific commission rate is unknown at the time the customer commits to purchase the policy, so that licensees will not be in breach of the legislation if the actual rate falls within that range.

5.5 - Timing of consent changes

Implementation for some licensees, particularly those that sell over the phone or online such as GFS, will need to include significant changes to systems so that the right disclosures are provided for contact centre agents to be read at the right time and to ensure they have the means of both recording the consent using a new data point, and producing a written copy of the consent statement to provide to customers in their welcome materials. The same issues can arise for online sales channels.

All of this requires time to develop, test and implement these system changes in a sustainable way. Accordingly, we request a 12-month transition period to ensure that these changes can be implemented without error.

Further Information

If you have any queries in relation to this submission, please contact me via the communication methods that were provided with this submission.

Yours sincerely,

Greenstone Financial Services Pty Ltd