

bruce.baker@puzzlefinancialadvice.com.au

From: bruce.baker@puzzlefinancialadvice.com.au
Sent: Wednesday, 6 February 2008 7:32 AM
To: bruce.baker@puzzlefinancialadvice.com.au
Subject: How to simplify SoAs ----- 002 - Complexity To Be Tackled In Financial Services Working Group To Start

Dear Sir

Congratulations for tackling the problem of simplifying SoAs.

I agree entirely that **"Complex and lengthy documents, often between 50 and 100 pages, are unreadable to most people."** Any reasonable person would have to have that view – and it is very widely understood among financial planners that long SoAs do not get read - and very few consumers read PDSs. This being the case, it is clear that the law is not providing the consumer protection that the government seeks to ensure.

Defining the problem more precisely:

While we will give further thought to this issue, it seems clear that central elements of the problem are as follows:

- That FSR requires documentation of information about the basis for the advice (and the level of details is what a retail investor would require to make a decision)
- And that the ENFORCER (namely FICS), only uses the written advice and correspondence to judge guilt or innocence, rather than the test about whether there was a reasonable basis.

The combination of the above 2 things guarantees that anyone writing short and concise SoAs is certainly currently taking an unreasonable business risk.

Further, the basis for non-simplistic investment advice is complex – and exceptionally long, not practical to put in SoA. So under the current law, there will always be an argument that an SoA is non-compliant because insufficient basis for advice has been provided – so many AFS licencees will err on the side of caution by providing more (excessive) basis for advice. So there clearly is an unsolvable tension in FSR Law, between a) requirement to provide information about the basis for advice and b) the sensible requirement to be clear concise and effective.

Proposed Solution:

- Remove the requirement to provide information about the basis for advice eg remove sections 947B(2) (b) and 947B(3) – and revert back to the pre-FSR Corporations Law protection that the advice provider must HAVE a reasonable basis for advice, rather than requiring the documentation of this basis in the SoA.
- Refocusing the consumer protection strategy regarding financial advice onto the following key elements:
 - Policing (and probably standardising) disclosure of factors which might influence i.e. 947B(2)(d) and 947B(2)(e). There currently is still a very high level of non-compliance with these sections – unpoliced.
 - Policing
 - The well established common law obligations in terms of negligence, duty of care; etc.
 - The Corporations Act 2001 requirement that:
 - there was a reasonable basis for the advice and the advice was reasonable in the circumstances. Section 945A
 - a licensee must "do all things necessary to ensure that the financial services covered by the licence are provided efficiently, honestly and fairly" s912A(1)(a)
 - The ASIC Act 2001 provision for protection in respect of:
 - Misleading or deceptive conduct. Section 12DA.
 - False or misleading representations. Section 12DB.
 - Requirements to apply "due care and skill", and that advice is "fit for the purpose". Section 12ED

Why this solution will work:

- Because it will be a major step on refocusing FSR from FORM onto SUBSTANCE.
- Because it refocuses the law onto the key principles of consumer protection that are needed.
- This would also go a long way towards making FSR workable for regular and ongoing advice providers such as that which is typically provided by 55 AFS licensee members of the Boutique Financial Planning Principals Group Inc – an association of independently-owned financial planning licensees.

Yes, many advice providers may wish to provide a supplementary document to explain, in a form tailored to THIS client [rather than for the “generic” retail client referenced in 947B(3)] , the basis for the advice.

I will consult with my fellow dealers, seeking their views on this issue.

Yours Sincerely

Bruce Baker BSc MBA DFP
Certified Financial Planner
Director
Puzzle Financial Advice
Australian Financial Licence 230050
ph (07) 3371 8112
bruce.baker@puzzlefinancialadvice.com.au

Some sections to remove – see the sections crossed out.

947B Statement of Advice given by financial services licensee— main requirements

- (1) This section applies if the providing entity is a financial services licensee.
- (2) Subject to subsection (3) and to the regulations (see subsection (4)), **the Statement of Advice must include the following statements and information:**
 - (a) **a statement setting out the advice;** and
 - ~~(b) information about the basis on which the advice is or was given; and~~
 - (c) a statement setting out the **name and contact details of the providing entity;** and
 - (d) **information about any remuneration** (including commission) or other benefits that any of the following is to receive that might reasonably be expected to be or have been **capable of influencing the providing entity** in providing the advice:
 - (i) the providing entity;
 - (ii) a related body corporate of the providing entity;
 - (iii) a director or employee of the providing entity or a related body corporate;
 - (iv) an associate of any of the above;
 - (v) any other person in relation to whom the regulations require the information to be provided; and
 - (e) **information about:**
 - (i) **any other interests**, whether pecuniary or not and whether direct or indirect, of the providing entity or of any associate of the providing entity; and
 - (ii) **any associations or relationships** between the providing entity or any associate of the providing entity and

the issuers of any financial products;

ight reasonably be expected to be or have been capable of influencing the providing entity in providing the advice; and

(f) if section 945B requires a warning to be given to the client in relation to the advice—a statement setting out, or recording, the warning required by that section; and

(g) any other statements or information required by the regulations.

~~(3) Subject to subsection (4), the level of detail about a matter that is required is such as a person would reasonably require for the purpose of deciding whether to act on the advice as a retail client.~~