

# FINA2209

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## Topic One: Best Interests Duty and Financial Services

- Financial Planning Process
  - Gather relevant information
  - Establish goals
  - Analyse the data
  - Develop a statement of advice
  - Implement the SOA
  - Review and revise what has been achieved
- Compulsory Superannuation
  - Currently at 9.5%
    - It used to be a defined benefit: where the employee would have to get a certain amount from the super
    - It is now a defined contribution: where the employer just has to give a certain amount. Transfers risk to employee.
- Wallis Review, 1997
  - Developed
    - APRA: for institutional oversight
    - ASIC: for consumer protection
      - Has oversight of

- Corporations Act
- Financial Services Reform Act
- ATO began to have oversight of self-managed super funds

### *Australian Financial Services Licences (AFSL)*

- Required by s911A of the FSRA
  - You need it if you provide financial services
  - You have a principle (like a company) who holds the licence, and they can have authorised representatives (employees)
  - Licensee is responsible for ensuring that ARs are trained and competent (ASIC RG36)
- What is a financial service?
  - RG36.2
    - A) provide financial product advice
    - B) deal in financial products
    - C) make a market for a financial product
    - D) operate a registered scheme
    - E) provide a custodial or depository service
    - F) provide trustee company services
    - G) engage in the kind of conduct prescribed in the Corporations Regulations 2001
  - This explanation is centred around products, so what is financial product advice
    - RG36.4: a recommendation or opinion that is
      - A) intended to influence a decision on a particular class of product, or could be reasonably regarded as being intended to have this influence
    - You need to know what a financial product is.
      - S736A
        - 1) a product through which a person
          - A) makes a financial investment
          - B) manages financial risk
          - C) makes non cash payments
      - S736B
        - Super, banking, life insurance, margin loans, securities

### *FOFA Reforms, Future of Financial Advice*

- Ripoll Report
  - After Storm financial
- Requirements
  - BID duty
  - No conflicted remuneration
  - Fee-disclosure, Requirement for biannual opt-in
- Obligations
  - Act in best interests
  - Provide appropriate advice

- If you can't provide complete advice you have to tell them
- Give priority to clients interests

### *Best Interests Duty*

- From the Future of Financial Advice Act, 2012 and the Corporations Amendment
  - S961B(1): the provider must act in the best interests of the client
  - S961J(1): the provider knows or reasonably ought to have known of a conflict of interest, then they must give priority to the clients interests
  - RG175.225: When assessing when the advice was in the best interests, does the reasonable provided believe that the client will be in a better position as a result of receiving the advices
- S961B: Safe Harbour Provision. If you follow these provisions then you are safe as an advisor from liability
  - S961B(2)
    - A)identified needs and objectives
    - B)identified
      - l)subject matter
      - li)the subject matter/objectives that would reasonably be considered relevant
    - C)if the information was incomplete then attempt to identify the information
    - D)assessed whether the provider has the relevant expertise to help the client
    - E)when recommending a financial product
      - l)conduct a reasonable investigation
    - F)base judgements off relevant circumstances
    - G)taken any other step that would be regarded as in the best interest
  - S961G)
    - Resulting advice must be appropriate for client
- What is reasonable
  - S961C: something is reasonable apparent if someone with that level of expertise would find it apparent were that person exercising care and objectively assessing the information
- What is reasonable investigation
  - S961D: reasonable investigation: does not need to be into every product available
- Advice based on incomplete or inaccurate information
  - S961H: if it is reasonably apparent that the advice is based on incomplete or inaccurate information they must warn the client.
- Conflict of interest
  - S961J: if a provider reasonably ought to know that there is a conflict of interest, they must give priority to the client
- Licensees must ensure compliance
  - S961L: They must take reasonable steps to ensure that their representatives comply with the above sections

- Important note
  - The act does not prevent the provider and the client from agreeing on the subject matter of the advice sought.
  - This is called scaled advice. The provider doesn't have to inquire into things that are reasonably assumed to be outside the scope.

### *Required Documents*

- Financial Services Reform Act
  - Financial Services Guide: FSG
    - Provides information on financial services available
      - Given prior to advice, s941D(3), except for the time critical exception, where it just needs to be less than 5 days
    - Clear, concise and effective manner
  - Product Disclosure Statements: PDS
  - Statement of Advice: SOA
    - Must contain sufficient information for client to make an informed decision
    - Don't need SOA when advice is given to a client who isn't a retail client
- FOFA
  - Fee Disclosure Statements
  - Opt-in: Bi-annually

### *Ethics and Advice*

- Ripoll Report Findings (after Storm financial)
  - One-size fits all not OK
  - They got clients to sign blank forms
  - CBA didn't provide timely advice
- Privacy Act
  - If someone gives you their TFN then there are additional burdens