



## Final Ripoll Report released

Financial advisers will have to act in their clients' best interests and may face an end to product commissions, if the recommendations of a new Federal Parliamentary Committee report released last Monday are made law. In addition, advisers could face losing their license if the Australian Securities & Investments Commission (ASIC) suspects they may not be meeting their obligations.

### The recommendations

The final report of the *Inquiry into Financial Products and Services in Australia*, or 'Ripoll Report', sets out 11 recommendations for reform to the financial services industry, including:

- a fiduciary duty imposed on licensed financial advisers, requiring them to place their clients' interests ahead of their own
- that Government consults with and supports industry to develop the most appropriate way to 'cease' product commissions
- increased resources and legislative powers for ASIC to allow the regulator to, among other things, suspend or cancel a planner's license where there is a reasonable belief that the licensee 'may not comply' with their obligations.

The recommendations also cover areas outside financial advice, including a suggestion that agribusiness scheme licensees should show ASIC formally that they have sufficient working capital to meet their current obligations.

### Planners as fiduciaries

Becoming a fiduciary fundamentally alters the legal relationship between an adviser and their client. A

fiduciary must not just manage but avoid any real or serious conflict of interest with their clients, restricting their ability to, for example, receive third party commissions.

Some advisers – particularly in the retail market – may be fiduciaries already. In addition to those who fall into formal fiduciary categories (like stockbrokers), advising an unsophisticated client who relies heavily on a planner's expertise and judgement could make the planner a fiduciary on the facts – especially if the planner instructs brokers and issuers about the client's investments.

Significantly, advisers have often disclaimed away possible fiduciary duties in their contract with the client. This ability may now be under threat. Indeed, the Committee makes no distinction between wholesale and retail markets in this regard, leading to a concern that, if enacted, corporate advisers to institutional clients or personal advisers of sophisticated high net worth individuals could lose current contractual protections where there seems to be little regulatory merit in such a change.

### Other impacts for planners

If the reforms become law, financial planners could also face:

- a new independent industry standards board for financial advisers
- complying with new terminology, competency and conduct standards set by the new board
- more regular shadow shopping by ASIC (ie regulator representatives acting as a client)
- the cost of a new statutory "last resort compensation fund" for investors (to be investigated)

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- the cost of changing marketing material to reflect any restrictions on their advice and any potential conflicts of interest they have
- individual bans from the financial services industry for misconduct.

## Government reaction

While the Government continues to work through the report, the Minister for Financial Services, Superannuation and Corporate Law, Mr Chris Bowen, has said that “the move away from commissions will improve transparency for consumers and will help to ensure that your clients receive advice which is free from any conflict of interest, whether real or perceived”.

## Access to the report

The final report, together with the committee’s terms of reference and copies of public submissions made to the inquiry, are available at:

[www.aph.gov.au/Senate/committee/corporations\\_ctte/fps](http://www.aph.gov.au/Senate/committee/corporations_ctte/fps)

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