

# Safe Guarding Your Clients with National Regulation

For many readers the headline statement will have captured your attention but what is the answer?

The disturbing facts emanating from the Finance Broking and Real Estate Industries are that while both are giving advice and selling products there is no set national regulation to control the full process. We continually read of clients that have lost money due to trusting the advice or sales process of a deemed professional. It is too late after the event to find that the person in question was not required to be licensed, to give financial advice and guidance. Sadly pride shattered clients find they have lost their savings, their dreams and have little or no recourse against an unprincipled, unlicensed operator with no regard for set processes or accountability.

Currently the Financial Planning Industry is being strongly supervised by ASIC, the statutory regulator, which is giving clients protection and when you consider the services offered by a Financial Planner, a Finance Broker and a Real Estate salesperson there is very little difference for the trusting clients, only the product differs. It is worth noting that only the Financial Planning Industry operates under a nationally controlled regulated platform, ASIC, which has strict accountabilities in place to which the Financial Planners must adhere.

Despite this accountability requirement for the Financial Planning Industry, the other two professions have different sets of rules depending on which state you operate in and therefore there are no national guidelines that cover the accountability when giving advice. It is easier to supervise a regulated and controlled industry than to try and sort out the many different state and territory laws that endeavour to control the behaviors of the professions that do not have national regulation.

Let's look at some examples of these issues and perhaps after reading this article many of you will actually take the steps to make things happen so all professionals selling products will have nationally recognized systems and processes. This will give every client confidence when dealing with a professional, no matter what product they are being sold. We must remember of course that no matter what regulations are in place, you will still not stop the criminal activity within a chosen profession as that is unfortunately part of human behavior no matter how educated, regulated or experienced a professional may be. What it does provide though is set guidelines and accountabilities that enable everyone to compete on the same playing field knowing full well the consequences of their actions. It also allows clients to feel safe when entrusting probably the largest investment in their life to a trusted and regulated professional.

Finance Brokers are currently only licensed in Western Australia to sell products and in New South Wales and Victoria they have disclosure requirements in regards to

commissions. In the ACT they must register to be a Finance Broker but nowhere is the advice and full disclosures process required. It can be strongly argued that clients are relying on their chosen professional to give them advice and recommend the best products. Finance Broker Member Associations have as part of their Code, that brokers must recommend the product to meet the client's needs, which in itself is advice, yet it is not regulated advice.

The mortgage industry has been operating fully in Western Australia since the late 1980's, under a 1975 code and to date there is still no national regulatory body to which the lenders can report Finance Brokers that they have suspended due to unprofessional practices. A national regulator coupled with a national register would also prevent banned brokers in one state moving to another state to operate freely without control. The privacy act prevents discussing this information between lenders and hence brokers that have committed fraudulent activity with one lender are then free to operate with the other lenders. One could argue that there are Associations such as the FBAA or the MIAA or in fact the respective State Departments of Consumer Affairs, but they are all not receiving the information that will allow them to take investigative or disciplinary action. In the Financial Planning Industry it is a requirement of all Dealer groups to report suspicious activities of their Authorised representatives to ASIC and their Professional Indemnity Insurer or the dealer group will have breached the regulations and could face serious consequences.

Why should that not be made mandatory for the Finance broking Industry and the lenders that deal in the industry? One would think that would be only fair and reasonable, whilst at the same time resolving this long outstanding issue. Lenders, principals, aggregators and associations in the financial services, once compelled to report the offenders, would then have the fear or concern of being sued, taken away from them as they would be obligated to report the matter. It would also make people think twice about doing the wrong thing, knowing full well the consequences of their actions will not be tolerated and this would provide a clear direction for the industry to follow. It would protect the borrowers from themselves and the actions of a few Finance Brokers that ruin it for the many great professionals in the industry.

Whilst Western Australia's Finance Brokers are covered by a code and must be licenced or employed by a licensee, it may surprise many that the finance employees of car yards are free to offer clients finance without the need to be licenced finance brokers. How can this be so when clients are being affected by decisions and actions that do not require disclosures? One would have to think to have two separate rules operating in the one state for the same outcomes could be considered unfair and questionable.

Would it now be timely to also address the Real Estate Industry and given they have their REI associations and Government controlling bodies in each state there are still clients receiving the wrong advice when purchasing probably the biggest investment in their life time? Real Estate sales people are operating under respective state codes which still do not address the advice giving process required to protect their clients. How many stories do we read of where advice has been given regarding a purchase that will return "x" percent and give "x" income when in fact no needs analysis has been completed with the

client. It may be that property may not be the best investment for that client. This leaves the client vulnerable coupled with the fact that no accountability is being demonstrated by a written statement of advice which sets out the above returns, growth and reasons why a client should invest in property compared to other investments. While the REI and the Government are currently in discussions on the way forward, one must not forget the best outcomes will be client protection and that can only be achieved by National Regulation of the selling and advice giving process for all property transactions. Providing clear guidelines will not only provide relief for clients but also for the existing and new entrants to the Real Estate Industry, while at the same time lifting the profile of the Industry up to the level of other financial professionals.

Asia, India and China are just a few countries that have taken an interest in the Australian Financial Services Industry business and regulatory models as it is considered to be better than what they have currently in place. The federal government has released a statement saying that the Finance Service Regulation and services are the next big export to replace mining in future years. Can you just imagine what Australia could export to the world if it had a total nationally regulated and trusted financial services industry with all financial services products and advice giving process covered? One needs to also understand the benefits and rewards that will be achieved by the financial services professionals and their clients if there are clear set guidelines under which they can all operate.

As I stated in my opening paragraph the Finance Broking Industry has been operating under a code released in 1975 in WA with a new code shortly to be released. My question to you all is do we continue with talkfests or do we actually now take constructive measures to ensure all Finance brokers and Real Estate Sales people are regulated in the advice giving process Nationally?

Is it time for misinformation, political lobbying or self interests to be put aside and workable national regulations be implemented? Let us make things happen so every profession can focus on providing and meeting their clients needs with confidence.

It is my strong belief if we act now it will only serve to benefit the respective industries and their clients...

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