

FUND AND ASSET MANAGEMENT: GETTING BACK TO BASICS

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Legal Briefings - By **Fiona Smedley, James Graham** and **Yorick Ng**

The Final Report contains a series of recommendations which, when implemented, will require fund and asset management firms to reassess their distribution channels and revisit their culture, governance and remuneration arrangements.

The Final Report articulates 6 general norms of conduct expected of financial services licensees and calls on them to ensure that their behaviour is consistent with those expectations.

Those norms or underlying principles are:

1. obey the law;
2. do not mislead or deceive;
3. act fairly;
4. provide services that are fit for purpose;
5. deliver services with reasonable care and skill; and
6. when acting for another, act in the best interests of that other.

We will refer to these norms as the Principles.

POLICY RECOMMENDATIONS

The recommendations contained in the Final Report will result in significant change to the businesses of both fund and asset management firms. The table below sets out several relevant recommendations and specifies whether each was expected or unexpected prior to the release of the Final Report:

Expected	Unexpected
Repeal of provisions that provide for grandfathered conflicted remuneration.	Review in 3 years of all exceptions to the ban on conflicted remuneration.
Application of the Principles (enunciated in the interim report) and where possible the simplification of financial services laws.	Direct linkage of the key principles to new legislation and reviewing and limiting exceptions to prohibitions.
Increased focus on litigation as an enforcement mechanism by ASIC rather than administrative proceedings or enforceable undertakings.	The Government's proposal to extend the proposed design and distribution obligations and product intervention power to cover all "ASIC Act" financial products (as defined in the <i>Australian Securities and Investments Commission Act 2001</i> (Cth)).
Greater focus on regulating culture.	
Annual reviews of ongoing fees and greater transparency of fee deductions from client accounts.	
Adoption of the breach reporting recommendations by the ASIC Enforcement Review Taskforce.	

THE BIG PICTURE

The Final Report shines sunlight on compliance failures across the industry and identifies a system of financial services regulation that is complex and has not been heavily enforced by the regulators.

The Final Report builds on the reforms and recommendations in recent years (including the Future of Financial Advice Reforms, the Ramsay Review, the Productivity Commission's report into Competition in the Australian Financial System and the ASIC Enforcement Review Taskforce) and identifies additional improvements to be made or considered.

These include the simplification of the regulatory framework, changes to the enforcement culture of the regulators and improving the financial services industry's accountability to its clients and the public, all of which will ultimately help rebuild public trust in the financial services sector.

The reforms that we anticipate will follow the Final Report will lead to significant change, but will also provide opportunities for industry participants.

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INSIGHTS AND TRENDS

The existing trend of financial advisers foregoing, and fund and asset managers ceasing reliance on, grandfathered conflicted remuneration arrangements will gather momentum following the recommendations in the Final Report.

The Final Report's focus on improvements to culture, governance and remuneration also continues ASIC's promotion of good corporate culture (and 'doing the right thing' by customers).

SO WHAT DOES THIS MEAN FOR THE INDUSTRY?

Fund and asset management firms should keep front of mind the 6 Principles, which inform the responses to the issues identified in the Final Report and on which future legislative reforms will be based.

Fund and asset management firms should also assess their organisation's culture against these underlying Principles and consider the extent to which they should be incorporated into the core values of the organisation and addressed in the training of staff.

They should also carefully review their distribution arrangements in light of the Final Report's recommendations and prepare for changes to their distribution channels, including as a result of the loss of grandfathering.

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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