

**bruce.baker@puzzlefinancialadvice.com.au**

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**From:** bruce.baker@puzzlefinancialadvice.com.au  
**Sent:** Tuesday, 25 September 2007 7:48 AM  
**To:** Jesse Vermiglio  
**Cc:** bruce.baker@puzzlefinancialadvice.com.au; Claude Santucci; Tony Gillett (gillett@retirewell.com.au); Darren Williams; Rhys Bollen (Rhys.Bollen@asic.gov.au)  
**Subject:** ASIC Consultation Paper 88 reviewing PS146 - Submissions due 25/9/07

Dear Sir

**Bottom line points:**

- Our main concerns relate what RG146 might be portraying as ASIC's ongoing training obligations. It is not reasonable to create an ongoing compliance that would be regarded as unreasonable by any other professional – in terms of ongoing cost in time and money – particularly where it provides no consumer benefit. But maybe our concerns relate to lack of clarity of ASIC's expectations regarding ongoing education for small advice-focused dealers, such as our members.
- A key question is how FSR 912A(1)(f) which identifies a very clear and simple principle – seemingly easy to test, by looking at whether there is a pattern of negligent or incompetent advice (i.e. SUBSTANCE) – has been translated into the complexity and volume of RG146, which seems to focus more on FORM rather than SUBSTANCE.
- The biggest concern we have consistently raised regarding FSR's implementation and the posturing of many players in our industry, is about the focus on FORM over SUBSTANCE. Consumer benefit from SUBSTANCE – competent, professional, un-conflicted ADVICE. Yet many players tout their FORM as being a substitute for SUBSTANCE. In RG146, unfortunately the focus is on FORM rather than SUBSTANCE – and many of the problems relating to RG146 stem from this fact eg PS146 compliance courses which provide a certificate but little education – resulting in advisors being let loose on the unsuspecting public, with the public supposedly being re-assured that ASIC-approved training has occurred. This is not good for consumers.

**Discussion:**

On reviewing Consultation Paper 88 and the current version of RG146, our impressions are:

- That largely the consultation paper (and its scope) is not tackling issues of key importance to most small dealers
- That the meeting/teleconference/industry consultation on 17/October/2007 does not seem a serious attempt at industry consultation. A serious attempt at industry consultation requires the regulator to go and talk one-on-one to the various industry segments, so the segments can understand where the regulator is coming from and the policy group of regulator can get to know what the issues are first hand and the segments can get to see that the regulator has understood the issue (this is what has been lacking in the past which is, partly why we have had so many problematic issues in ASIC Policy Statements.
  - So at this time, there seems to be little value in being part of the Sydney industry consultation – **but we would be happy to discuss with you one on one, face to face** the RG146 issues that cause concern to our members.
- The biggest ongoing issue that I see in PS146/RG146 is the seemingly excessively bureaucratic approach to ongoing training requirements – perhaps suitable for a very large dealer like AMP Financial Planning – but not suitable for small dealers (our members) where the principal typically has daily personal supervision over the reps of the business – and where the focus is on ongoing-advice not product-sales. In the case of our members, the principal tends to be a very highly experienced and highly qualified practicing financial planner. Because the principal, in such cases, is such a highly experienced and highly qualified practitioner, and running a professional advice business they know far better than anyone, what the ongoing training requirements of the practice are – and the seemingly implied RG146 focus on FORM and STRUCTURE of the ongoing training creates additional costs for these small dealers AT NO CONSUMER BENEFIT BUT AT ADDITIONAL COST TO CONSUMERS. But possibly, from the NOTE in RG146.109 the problem may be about ASIC's actual intent being not real clear – and in that, some discussion may be helpful.
  - On reviewing the current version of RG146, the main comments about ongoing training currently seem

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to be references like the ones below:

RG 146.109 Licensees should develop an annual training plan for each adviser. Annual training plans should address the following steps:

- (a) assess the adviser's training needs in relation to the training standards, particularly if the adviser's functions change;
- (b) identify the adviser's gaps or weaknesses in the preceding year and the areas where training will be focused;
- (c) set objectives to be met (ie the desired changes in the adviser's knowledge, skills and/or performance at the end of the training year);
- (d) decide the structure of the continuing training program (including nominating the training methods);
- (e) assess whether the adviser has met the objectives of the training program; and
- (f) provide feedback sessions with the adviser about their performance.

Note: There might be situations where continuing training is not necessary for all persons who advise on basic deposit products and related non-cash payment products. The licensee will first need to consider whether continuing training is required. It might be that there is no need if, for instance, the products have not changed.

RG 146.113 Continuing training plans developed on a group basis must address the steps in RG 146.109 and be monitored on an ongoing basis.

- Is the issue, really about finding a better understanding of what the ASIC is looking for? Eg the above note on RG146.09 seems to indicate sensible flexibility. But still the approach does seem excessively bureaucratic.
- However, this does focus the mind on the question of how FSR 912A(1)(f) which identifies a very clear and simple principle – seemingly easy to test, by looking at whether there is a pattern of negligent or incompetent advice (i.e. SUBSTANCE) – has been translated into the complexity and volume of RG146, which seems to focus more on FORM rather than SUBSTANCE. This focus on FORM has spawned an industry of “training providers” who are more than happy to provide RG146 compliant FORM, but inevitably this has spawned “training providers” who seem to deliver little substance or consumer benefit – so it seems to have become a bit of a farce.
  1. Section 912A(1)(f) simply says that a licensee must ensure “that its representatives are adequately trained, and are competent, to provide those financial services;”

So, in summary Jesse we would like to invite you to come and talk with us about the practicalities and implementation details of RG146 – but at this stage, your consultation paper does not encompass the issues we raise about and so we are simply providing this email with some brief comments.

I enclose a few discussion points on this topic below.

Yours Sincerely

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## APPENDIX A. Some commentary provided earlier to you.

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**From:** [bruce.baker@puzzlefinancialadvice.com.au](mailto:bruce.baker@puzzlefinancialadvice.com.au)

**Sent:** Tuesday, 18 September 2007 9:07 AM

**To:** Jesse Vermiglio

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**Subject:** PS146: If you are an agent, then you need to be competent in the relevant areas of PS146. If you

represent the client (ie are independent of the product manufacturer) then you need to be competent in "financial planning". You don't need to be both.

Jesse

One of our members who is providing feedback on your PS146 review has provided the following gem of absolute wisdom – which goes to the fundamental premise of PS146.

The type of ongoing education required for an “agent” (yes they parade as reps of product distributors) is fundamentally different from that of an independent advisor representing the client.

Yet, this if absolutely ignored – or not understood – by the way PS146 seeks micromanage ongoing education – as if we are all “agents” of product providers.

This I suspect, is the most fundamental issue with PS146. The independent advisors representing the client needs full scope of tools – after understanding needs of the client, then looking to the possibilities about creating the best strategy for the client – and sometimes this involves research into new areas that the independent advisor has not touched on before – and this should not be denied to his client – and yet at its core, PS146 seeks to provide a straight-jacket which might be appropriate for a product sales person but which is against consumer interests when a independent advisor (in the proper meaning of the word independent) is involved.

If you are an agent, then you need to be competent in the relevant areas of PS146. If you represent the client (ie are independent of the product manufacturer) then you need to be competent in "financial planning". You don't need to be both.

It is by being a competent financial planner that we true independent advisors serve our clients well – NOT because we are competent with product. And that is where our ongoing training needs be directed – if we are to achieve maximum consumer benefit.

regards

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PS: We have no real problem with the basic premise that someone needs to do some basic training before being a financial planner. However, the way ASIC have approached this interpretation of 912A(1)(f) has meant that course necessarily have come about which have been about FORM and not SUBSTANCE – and so many of those who have completed recent PS146 compliance training can tout themselves as having COMPETENCE when in fact they have learned nothing of substance. We have first-hand experience “compliant” PS146 training where there was not any training of any meaningful substance. This is proof that ASIC has absolutely taken the philosophically wrong path in seeking to interpret 912A(1)(f) – because ASIC has created an industry where many people tout themselves as meeting ASIC-required qualifications – yet they are dangerous when it comes to giving advice – so ASIC seems to have been complicit in misleading the public in this matter.

## **APPENDIX B. About BFPPG members and RG146.**

Our members tend to be quiet atypical of our industry.

- That is the dealer principal tend to be a very highly experienced practitioner and he is in a position of supervising closely the advice that goes out from his office. Typically a single office dealer – but eg Gedhe Cole – two principals each supervising their own locations.

- Our members also tend to be in the ADVICE business rather than product sales.

As such these principals are better placed than anyone else to know precisely what training their staff need for their type of practice – to most importantly look after their clients – but with the secondary effect of complying with 912A(1)(f)

By contrast, there is logic of a dealer like AMP (spread around many offices – and in the product distribution business) needing procedures like RG146 so as to adequately supervise their reps, but it is important that ASIC does not take a one-size-fits all – and that ASIC has the flexibility to apply the principles defined in FSR, in a way which accommodates the range of different styles of financial planning practices.

There needs to be a minimum training standard to be a practicing financial planner, just like there is for law and medicine. But it is not reasonable to create an ongoing compliance that would be regarded as unreasonable by any other professional – in terms of ongoing cost in time and money – particularly where it provides no consumer benefit. But ASIC's seeming attempt through PS146 of micro-manage ongoing training seems to be a very poor and inappropriate solution to our segment of financial planning industry. The dealers, for the reasons given above, are in the best position to determine the ongoing training requirements of staff and reps. ASIC's current attempt at micromanagement of ongoing training adds costs in time and money (particularly for small dealers) but it adds no consumer benefit.

Another specific comment

**specific questions**

***adequateness of current training standards - training requirements for simpler products (Questions B1Q1 – B1Q5)***

should be taking responsibility for what is an appropriate Tier 2 training. I would go further -

require that Licencees should be taking responsibility for what is an appropriate Tier 1 training as well. All the crap and ongoing training would disappear overnight. This seems the only practical answer – and it avoids the current one-off approach which has failed badly.

Is there a check and balance? Licencee has obligation to fulfil obligation written in the law namely:

**912A(1)(f) ensure that its representatives are adequately trained, and are competent, to provide those financial services;**

And a way to establish whether this has been occurring is whether a particular dealer is not complying is if his reps display a **pattern** of negligence or incompetence etc.