



EXCLUSIVE ▶ **Advisers have one shot at rescuing grandfathered revenue** of financial advisers heading to the High Court in a bid to

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ADVISERS TO 'NAME AND SHAME' INSTOS OVER COMMISSIONS

Financial advisers across Australia are bankrolling a united effort to challenge regulatory reforms and the institutions that are already implementing Hayne's recommendations.

by James Mitchell - April 18, 2019 11 comments

The Advice Regulation Challenge (ARC) has been established by a number of industry leaders, including AIOFP executive director Peter Johnston, to form a united stand against what he describes as "the collective punishment of the advice community for broader problems in the financial services sector".

The ARC is being funded by advisers and chaired by barrister Arwed Turon, with Melbourne Securities Corporation serving as trustee.

The ARC is currently in the process of raising \$3 million in fighting funds and has hired lawyers Corrs Chambers Westgarth and constitutional barrister Peter Kulevski to represent it in the High Court, where advisers will argue that proposals to ban grandfathered revenue are unconstitutional.

The royal commission recommended banning grandfathered commissions, which are an important revenue stream for many advisers and were understood to be left alone for a time following a carve-out agreement in the FOFA reforms.

While the issue of grandfathered revenue is critical to the ARC campaign, Mr Johnston told ifa that the group's strategy is about protecting the advice community.

"The advice community will be using its aggregated political and commercial power to challenge bad legislation and those institutions who have decided to not honour their current contractual obligation," he said.

"They are working on the premise that a grandfathered revenue ban has already been legislated and the advisers will not take them on."



The Melbourne-based adviser said the ARC has "a succinct message" for these institutions.

"If you do not honour your contractual obligations to advisers we will name and shame you across the advice community," Mr Johnston warned.

"We will be calling on each and every manufacturer to declare their political position and answer a simple question: are you with or against the advice community?"

He explained that product providers that are in support of the advice community will be asked to sign a declaration of support and consider supporting the ARC fund.

"Those who support the advice community will be nominated on our website and can use the ARC Supporter logo on their

marketing material," Mr Johnston said.

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Mr Johnston confirmed that the ARC has received support from both aligned and non-aligned advisers, a reflection that the entire financial advice community is "in the struggle together".

More to come.



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Karthik Gan (Nab) 1 week ago.

If advisers are receiving grandfather commission all they need to do is convert these fees into flat dollar fees, I'm not sure what the fuss is. Only dodgy financial advisers will fight this position.

-2 [Quote Reply](#)



Anonymous 3 weeks ago.

For those asking it is Colonial First State and BT. Not surprisingly Colonial sent out an email under the Money Management banner yesterday talking how they are reducing their fees. It doesn't take a genius to work out how they are funding this. Also it answers why IFA, Money Management etc aren't naming CFS and BT because they are conflicted and don't want to lose the advertising revenue.

5 [Quote Reply](#)



Dave from Perth 4 weeks ago.

Well stated Agent 86, bring it on I say.

9 [Quote Reply](#)



Customer 4 weeks ago.

At present Bill Shorten can't even remember whether his proposed superannuation changes are going to increase taxes on super, but I bet he can remember the phone number of the CFMEU.

26 [Quote Reply](#)



Chris Tobin 4 weeks ago.

In the meantime, still waiting for ASIC to release their 2018 gifts register info. Obviously too busy redacting all of the entries rather than managing this farce.

12 [Quote Reply](#)



Agent 86 4 weeks ago.

On 29th August, 2011, the then Minister for Financial Services & Superannuation, Bill Shorten via Treasury, provided a comprehensive media release No: 127. On page 2 of this document it states:

" The ban on conflicted remuneration (including the ban on commissions) will not apply to existing contractual rights of an adviser to receive ongoing product commissions.

This means that, in relation to trail commissions on individual products or accounts ,any existing contract where the adviser has a right to receive a trail commission will continue after 1 July 2012, or in the case of certain risk insurance policies in superannuation , 1 July , 2013."

On page 5 of this document it states:

" Following legal advice from the Australian Government Solicitor, the Government has determined that the ban on conflicted remuneration (including the ban on commissions) will not apply to existing contractual rights of an adviser to receive ongoing product commissions."

Then in a document titled Corporations Amendment (Further Future of Financial Advice Measures) Act 2012 No: 68, it states in Part 10.18 section 1528 (Application of ban on conflicted remuneration) .

Section (3) " Despite subsection (1), that Division does not apply to a benefit given to a financial services licensee, or a representative of a financial services licensee, to the extent that the operation of that Division would result in an acquisition of property (within the meaning of paragraph 51 (xxxi) of the Constitution from a person otherwise than on just terms.

In section 1530: Regulations do not apply where an acquisition of property otherwise on just terms would result:

" Regulations made for the purpose of subsection 1528 (2) or 1529 (2) do not apply to the extent that the operation of the regulations would result in an acquisition of property within the meaning of paragraph 51 (xxxi) of the Constitution from a person other than on just terms".

Bill Shorten has stated that his Government would ban all grandfathered commission effective immediately if elected.

In that case, Bill Shorten would have to confirm the previous advice he received from the Australian Government Solicitor and from which advice he instigated the grandfathering of existing contractual rights for advisers to continue to receive this remuneration was in fact flawed and incorrect.

Bill Shorten would then have to deny that the reason for the grandfathering provision was in order to protect the existing contractual rights of the adviser following contrary advice from the Australian Government Solicitor.

Why would this advice have been provided?

It would have to be accepted that the existing contractual rights of the adviser represented the right to property and if the legislation were to include the banning of the right to that property, the Government would be staring at a Constitutional issue and be obligated to have to provide just terms as



29 [Quote Reply](#)

Namer 4 weeks ago.
Why won't anyone name names?



1 [Quote Reply](#)

Anonymous 4 weeks ago.
The FPA is only interested in developing passive income streams (FPEC and Education courses/CFP courses are classic examples) and really only work for product manufacturers, and definitely not advisers. So it's fantastic to see for the first time in about 20 years a body that is actually prepared stand up and to act for Advisers and not themselves or some product manufacturer. Whether or not you believe there cause it right or wrong, there motives are true. For that I support them.

This lone voice in the industry whilst openly saying they don't want to be a professional body but just be an industry representative body for advisers is by casting off the shackles of these product manufacturers, leaving behind these relationships and conflicts are indeed actually being more professional than any other body currently in the market.

What we are seeing now is the birth of Australia's very first professional body. Congratulations AIOFP.

55 [Quote Reply](#)



Adam 4 weeks ago.
What are the names of firms writing to individuals to opt into advice???

5 [Quote Reply](#)



Anonymous 4 weeks ago.
nothing short of brilliant - my licensee is now a full-blown powder puff that is a virtue signaling. Summary executions being the order of the day - a retrospective interpretation of obligations. And entirely missing in action in any form of push back on the regulator. a really nice lawyers picnic. I find it curious that NAB has been hammered with a half a billion "remediation" and not so much as an explanation as to why - the complexities and what has forced this. half a billion is not small change

5 [Quote Reply](#)



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