

ARGYLE ADVOCATE

COUNTDOWN TO FINANCIAL SERVICES REFORM

Q. Under FSR I am afraid that I cannot afford some of my clients, or more correctly, they cannot afford me. I have heard conflicting comments on the depths of advice that is now required in every financial plan. Do I always have to give full and comprehensive advice no matter what the client issue is or how much money is available for investment or can I continue to give scaled down advice?

This is a common question in the post-FSR environment, one that has especially concerned many licensees and advisors who concentrate in a specialist field of financial planning such as advising teachers or government employees or the self managed superannuation fund market or who principally operate in a particular class of financial product such as life insurance.

The Corporations Act is clear, Section 945A requires that a financial plan only be provided where the licensee or advisor has made proper enquiries of the client. At first glance this seems to require an extensive examination of the client. Some have even suggested that a failure to gather the information means that the licensee or advisor should refuse to provide the service. But this is an over-reading of the law.

Section 945A requires the gathering of such information as is *relevant in the circumstances in relation to the giving of the advice*. Thus, the client together with the advisor can control the length and breadth of the advice and service that is to be provided. Only then is there a need to make reasonable enquiries in relation to *those personal circumstances*. Of course, this may require the advisor to assist the client if the advisor is to provide advice within the financial means of the client.

A key to the process is in establishing the terms of the engagement. Provided these are clearly expressed, this will be the *relevant personal circumstances* contemplated by Section 945A.

There is no doubt that the law requires an emphasis on a whole financial planning process. However, it was never the intention of FSR to raise the financial planning process to a point where only the well off can afford professional financial planning.

It is good practice that, whenever the financial plan is to be limited to the agreed *relevant personal circumstances* of the client, that the advisor then comply with the spirit of Section 945B and include a warning that the advice may be deficient because it is based on and is limited to those agreed *relevant personal circumstances*.

If this approach is followed, there is no need to warn the client that the advice may be deficient because it is based on incomplete inaccurate information, this is not true, at least it should not be true. Once the agreed relevant personal circumstances have been determined, the advisor is required to make reasonable inquiries in relation to those circumstances. The warning for incomplete or inaccurate information is only required by Section 945B where the advisor is providing advice based on limited information relative to the agreed relevant personal circumstances.

So can you give scaled advice? Yes, just communicate this with the client in a clear, concise and effective manner, in a way that ensures that they understand what they are getting from you. Then make sure that you gather all the relevant information and provide the full and comprehensive advice,

relevant to what has been agreed.