

Law Council hits at wider ASIC powers

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THE Law Council has warned that a proposal to boost the power of the corporate regulator to refuse or cancel financial services licences and should be reeled in.

The council, which represents 56,000 lawyers across Australia, says the federal government plan gives too much discretion to the Australian Securities and Investments Commission over who should be allowed to hold a financial services licence, which is required to run any sort of services business in Australia.

But ASIC says it needs the powers to protect investors from unscrupulous operators, saying existing laws make it too hard to cancel a licence or refuse to grant one.

The plan is part of the federal government's Future of Financial Advice (FOFA) reforms, which aim to strip out conflicts of interest in finance and better protect retail investors following the collapses of Storm Financial and Trio Capital.

In a submission to a parliamentary inquiry examining the FOFA laws, the Law Council has found fault with many aspects of the reforms, saying they would create uncertainty for financial advisers and could lead to negative, unintended consequences. And it says it is concerned by the "breadth" of the potential new powers.

At the moment, ASIC can only immediately suspend or cancel a licence in limited circumstances - such as if the licensee is insolvent or committing serious fraud.

ASIC can seek to cancel a licence after a hearing, but again only in certain cases - including if the licensee has failed to meet its obligations and the regulator has reason to believe the licensee "will not comply" with its obligations in the future.

ASIC's decisions can be appealed before the Administrative Appeals Tribunal, where - the regulator has argued in its own submission - it has struggled to prove its case. ASIC says it is similarly hamstrung in its ability to refuse a financial services licence.

The new laws would allow ASIC to refuse or cancel a licence if it believes a licensee is "likely to" breach its obligations in the future, lowering the standard of proof.

But the Law Council says this gives ASIC too much discretion and calls for more certainty about how it can prove a licensee is "likely to" breach its obligations.

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