EXAMINING THE LEGITIMACY OF THE CURRENT 'AUTHORISED REPRESENTATIVE' LICENSING MODEL

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ABSTRACT

Legitimacy of licensing individual financial advisers through third party licensees is currently debated by the media and in practice, with unsubstantiated claims evident in the majority of commentaries. A sticking point is the lack of a theoretical framework within financial planning theory to obtain substantiated evidence. We rectify this by applying Suchman's legitimacy theoretical framework to the current authorised representative licensing model to collect validated evidence in future empirical research. This not only advances financial planning theory, but raises further questions for future empirical research, which should provide policymakers data required to make evidence-based decisions around licensing advisers.

1.0 Introduction

In the absence of compelling scientific evidence is the debate, in the media and in practice, concerning the legitimacy of the current authorised representative (AR) licensing model for individual Australian financial advisers. The lack of a theoretical framework within financial planning theory defining, modelling and measuring legitimacy is leading to a deficiency in scholarly attention on this matter. To rectify this deficiency, Suchman's theoretical framework is qualitatively interpreted, applied and extended to inspect the legitimacy of appointing, authorising and regulating (licensing) individual advisers through third party licensees as specified in the Commonwealth Corporations Act 2001 (the Act) (Commonwealth of Australia, 2001). Applying legitimacy to financial planning theory, for the first time, in this way lays the theoretical foundation to (1) advance financial planning theory, (2) raise further questions for future empirical research and (3) provides policymakers a basis to obtain credible evidence required to make evidence-based decisions around licensing advisers. Our analysis begins with a brief historical background discussion on the legislative framework of licensing advisers in Australia, together with a simple description of the Australian AR licensing model. The significance of examining the legitimacy of the existing AR licensing model is then highlighted. Subsequently, the main section then attempts to interpret Suchman's legitimacy theory by applying it to the AR licensing model. In the closing statements, we present some recommendations for future research direction and the way forward in applying our stated theoretical framework.

2.0 Background to the Legislative Framework of the AR Licensing Model

Since 1996 the current AR licensing model has been rooted in the implementation of Financial Services Reform (FSR) and the subsequent Corporate Law Economic Reform Program [CLERP] (Corbett, 1999; Overland, 2007). CLERP with Wallis's Financial Systems Inquiry recommendations published in 1997 led to the Commonwealth Financial Services Reform Act 2001 (FSRA) on 11 March 2001 (Hutson and Vonnessen, 2003; Parliamentary Joint Committee on Corporations and Financial Services, 2014). FSRA repealed the old licencing system of multiple licenses regulating the activities of inter alia insurance agencies, brokers, securities dealers, accountants and solicitors (Pearson, 2006). Chapter 7 in the new Commonwealth Corporations Act 2001 replaced the old corporation's legislation. From 11 March 2002 (Australian Securities and Investments Commission, 2016e), a single licensing system (Banister *et al.*, 2013) , namely the Australian Financial Services License (AFSL) authorised financial institutions (licensees) and their ARs to offer financial products and services to the public (Pearson, 2006; Hutson and Vonnessen, 2003). The 2008 Global Financial Crisis and corporate scandal headlines of unethical behaviour (Ap, 2011) led to a loss in public trust and confidence in the financial advice industry (Ap, 2011; Taylor *et al.*, 2013). The Australian Government responded with the Parliamentary Joint Committee on Corporations and Financial Services (2009) [Ripoll Inquiry] (Australian Government, 2014) resulting in Future of Financial Advice (FoFA) legislation (Australian Government, 2014) to deal with inter alia conflicts of interest (Alexander, 2011) from product sales (Burke and Hung, 2015). One FoFA intent was improving Australian retail clients' trust and confidence (Ap, 2011) by professionalising the financial advice sector away from a sales-driven distribution network (Burke and Hung, 2015).

FoFA reforms started with consumer credit legislation. Under this legislation, effective 1 January 2010 (Ap, 2011), the Australian government regulated conflicts of interests relating to loan products (Banister *et al.*, 2013). Australian Securities and Investments Commission (ASIC) enforced from 1 July 2010 an Australian Credit Licence (ACL) as specified in the National Consumer Credit Protection Regulations 2010 on licensees and their ‘credit representatives’, who can also be ARs (Holley Nethercoate Commercial & Financial Services Lawyers, 2014). Ostensibly, this additional regulation moved FoFA away from single licensing back to multiple licenses. Banister *et al.* (2013) maintained the overlap between the ACLs, full AFSLs and the limited AFSLs initially confused advisers. After FoFA critics contended its proposals would not prevent unethical behaviour (West, 2009; Hartnett, 2010), more financial corporate collapses ensued, specifically Trio Capital and Storm Financial (Commonwealth of Australia, 2016). Subsequently, three tranches of FoFA legislation were implemented to amend specific clauses of the Act (Kell, 2013). Operative 1 July 2012, and mandatory compliance commencing 1 July 2013 (Burke and Hung, 2015), the first and second tranches were implemented as separate yet related FoFA regulations (North, 2015), covering client’s best interests duty, annual fee disclosure statements and renewal notices where clients would opt in every two years to continue ongoing fees. It banned conflicted commission and volume payments (Burke and Hung, 2015). A voluntary transition period and grandfathering arrangements were implemented so that licensees and advisers could adjust their business models to comply with FoFA. Initially, ASIC took a facilitative approach to compliance; thereafter, all AFSL licensees had to comply (Australian Securities and Investments Commission, 2016c). The third tranche covering commissions, best interests duty, opt-in requirements and fee disclosure statements, was mooted on 19 November 2014 (Australian Securities and Investments Commission, 2016c). The Australian Senate reversed the law back to the initial regulations before their implementation (Australian Securities and Investments Commission, 2016c). Afterwards, the Government worked on foundations of the disallowed regulation. A few provisions in the disallowed legislation were reinstated when two regulations were implemented on 16 December 2014 and 1 July 2015 (Commonwealth of Australia, 2015).

In addition to the above changes, amendments were made to the previous accountants’ FSRA AFSL licensing exemptions (Banister *et al.*, 2013). Until 30 June 2016, accountant’s Regulation 7.1.29A exemption (Halsey and Halsey, 2014) applied, allowing accountants to, for example, set up self-managed superannuation funds (SMSFs) (Adams, 2002). Operative 1 July 2016 this exemption was repealed (Commonwealth Government, 2013). Now accountants must hold a full or limited AFSL or become ARs under another licensees’ AFSL should they advise on certain financial products and services, inter alia SMSFs (Global Accounting Alliance *et al.*, 2016). With FoFA reforms taking hold, some maintained the reforms were reactive (Valentine, 2013), unnecessarily complex, a burden and reducing advice availability to the public by increasing advice costs (Mennen, 2014). Accordingly, the Australian Government announced on 20 November 2013 a Financial System Inquiry [Murray Inquiry] reviewing the financial services industry’s overall strength (Commonwealth Government, 2014). To encourage advice costs flow-on-effects to clients, the review’s purpose was simplifying the system’s overall complexity, providing certainty, reducing compliance costs and lowering administrative burdens by decreasing red tape (North, 2015). Furthermore, Murray recommended lifting professional, ethical and education standards among advisers (Parliamentary Joint Committee on Corporations and Financial Services, 2014). On Murray's recommendations, from March 2015 a parliamentary joint committee (PJC) considered measures to raise these standards by expecting all new advisers to complete a minimum degree qualification, obligatory ongoing professional development, as well as a structured professional year as a prerequisite for registration (Parliamentary Joint Committee on Corporations and Financial Services, 2015). This PJC inquiry culminated in an exposure draft legislation tabled on 3 December 2015 for consultation with industry (Australian Government, 2015). Although at the time of writing consultations were completed, the legislation is on hold. Notably, this legislation included an independent industry-established standard setting body (Australian Government, 2015), which it is surmised should impact the legitimacy of the AR licensing model.

Notable during the Murray Review's consultation phase was a brief dialogue in the Australian Senate about a single financial license for each individual financial adviser, rather than one license for an institution (licensee) contractually engaging a number of advisers (Commonwealth of Australia, 2014e). Surprisingly, the final Murray report made no recommendations regarding individual licensing (Commonwealth Government, 2014). Instead, his report concluded the existing regulatory framework of product design, product distribution, disclosure and financial advice is insufficient to deliver reasonable treatment to clients (Commonwealth Government, 2014).

Many (specifically Kingsford Smith, 2011; North, 2015) contended the legislation would be unsuccessful in bringing tangible benefits to the public. Pearson (2006) pointed at the licensing model as a risk to clients with expensive compliance costs and significant adviser turnovers. Superficially, FoFA reforms dealt with specific clauses in the Act, neglecting the overall manner in which advisers were licensed through third party licensees, specifically those advisers affiliated to product issuers.

2.1 The Current Authorised Representative Licensing Model

Part 7 Division 5 is a key part in the Act relating to licensing financial institutions (licensees) and their ARs (financial advisers) (Banister *et al.*, 2013; Jones, 2012). It is supported by the Corporations Regulations 2001, Schedule 2 and 3 in the Corporations Amendment Regulations 2013 (No 3), Explanatory Memoranda and ASIC Regulatory Guides (Global Accounting Alliance *et al.*, 2016). ASIC enforces a process appointing, authorising and regulating individual advisers through third party licensees (Beal and McKeown, 2009) prescribed in Sections 916A, 916B, 916C, 916D, 916E and 916F of the Act (Commonwealth of Australia, 2001). The licensees' role is providing internal and external legitimacy for the actions of their advisers, which outwardly is demonstrated by a rigorous selection process (Bender, 2011) using a monitoring, supervising and training compliance system (Bennett, 2000). From 31 March 2015,ARs must be registered on the ASIC Financial Adviser Register available for public access (Australian Securities and Investments Commission, 2016b). With a few exceptions (Commonwealth of Australia, 2001) licensees may choose to hold a full (Teale, 2008; Commonwealth of Australia, 2001) or a limited AFSL (Commonwealth of Australia, 2001). For example, under a limited AFSL, advisers may advise on SMSFs, superannuation products, securities, simple managed investment schemes, general and life insurance, and basic deposit products. Alternatively, advisers can obtain a full license offering comprehensive ('holistic') personal advice (Australian Securities and Investments Commission, 2012b). Individual ARs do not require a licence as specified in Section 911A, unless they deliver financial advice without supervision via an AFSL licensee (Parliamentary Joint Committee on Corporations and Financial Services, 2009, p.23). Consequently, a review of non-scholarly literature and apparent in practice (Holley Nethercoate Commercial and Financial Services Lawyers, 2014; Power, 2015; Global Accounting Alliance *et al.*, 2016), which was not explicitly defined in scholarly works, indicated ARs can only practice their craft when they are either: (i) self-employed and independent with their own AFSL, thus taking on AFSLs' legal and financial accountability; (ii) self-employed by becoming contracted/franchised via institutional licensees and using the licensee's support services without taking on AFSLs' legal and financial accountability; or (iii) employees of institutional licensees with AFSLs whereby the AFSLs' legal and financial accountability lies with the licensee.

Along similar lines, prominent in the media and in practice (Power, 2016; Fox, 2014; Spits, 2014; Lester, 2016; Jacobson, 2016; Pokrajac, 2014; Commonwealth of Australia, 2001) yet insufficiently addressed in scholarly literature is the identification and definitions of the categories of licensees and their ARs. On these grounds we define advisers as: (I) independent providing independent advice. Therefore, legally they can use the terms 'independent', 'impartial' or 'unbiased' as specified in section 923A of the Act, because they either meet: (a) the Independent Financial Advisers Association of Australian's (IFAAA) gold standard and strict independence conditions, with no direct or indirect ownership, affiliation or association (henceforth, affiliation) links to product issuers, and charge no commissions or asset-based fees (for example licensees Roskow Independent Advisory and Brocktons Independent Advisory); or (b) the requirements in section 923A, with no direct or indirect affiliation links to product issuers, charge no commissions, but charge asset-based fees (for examples licensees Pitcher Partners Wealth Management and Aspire Financial Consultants). (II) Aligned to product issuers providing aligned advice. Therefore, legally they cannot use the terms 'independent', 'impartial' or 'unbiased', because they do not meet the requirements in section 923A (for example AMP-owned licensees and the bank-licensees). (III) Non-aligned to product issuers providing non-aligned advice. Therefore, they cannot legally use the terms 'independent', 'impartial' or 'unbiased', because they only meet some of the independence principles as prescribed in section 923A (for example licensees, Professional Investment Services and Count).

Surprisingly, there are various allegations (see, for example, Vickovich (2015)) of mid-sized licensees and their ARs advertising themselves as 'independent' while under the misconception of following the independent advice principles when instead they are selling their own 'white label' products recommended from single platforms and/or allow commissions or asset-based fees. Thus potentially misinterpreting the requirements in section 923A of the Act. Therefore, it is apparent more research is required to understand how practitioners understand the definition of independence as defined by the Act. Also subject to deficits in academic works, yet apparent in media commentaries (Vickovich and Micallef, 2013), were discussions on the advantages and disadvantages of licensing advisers through third party licensees. Some advantages include inter alia third party licensees allowing advisers to focus their attention on the client while leaving backoffice, compliance and regulatory burdens to the licensees. Licensees affiliated to large institutions are in a better position to pay compensation to clients for losses suffered if legal compliance breaches or unethical behaviour occurred (Pokrajac, 2014). Disadvantages include inter alia advisers unable to market themselves as independent to clients who consider independence important, as well as being restricted by the licensees' approved product list when providing advice to clients (Santhebennur, 2014).

North (2015) contended the licensing regulations disseminated a range of business models covering different sizes. Debatably, leading to inconsistent standards between licensees (Vickovich, 2014c) for compliance audits, education, training, supervision, licensee licensing requirements and conduct (Bennett, 2000). Valentine (2008, p.283) critically reasoned not all advisers operate on a level playing field, nor carry uniform regulatory burdens under the existing licensing model. For example, S765A of the Act does not regard physical assets such as direct real estate (property), wine, art, stamp collections and credit facilities as financial products (Commonwealth of Australia, 2001). So inter alia mortgage brokers, real estate agents, art dealers, coin and stamp dealers do not require an AFSL or are only partially covered by the AFSL regime. Furthermore, Smith *et al.* (2009) propounded the view the Act excludes estate planning or non-product strategic advice. Haigh (2006) observed despite FSR legislation introducing a legal and ethical framework governing advisers and licensees, commensurate levels of accountability are missing. Under FoFA legislation accountability is not at the individual level, but at the institutional level, where the majority of advisers are affiliated to product producers (Parliamentary Joint Committee on Corporations and Financial Services, 2009). Prior to statutory best interest duty obligation, Gor (2005) noted the accountability burden rested entirely on licensees to authorise representatives to offer financial services. Thereafter, it rested with both the licensees and their ARs. Contrary to this, Serpell (2008) argued the scope of the AR licensing provisions were too narrow and unclear. It is therefore critical that further theoretical and empirical research is undertaken on the issue of licensing advisers through third-party licencees to safeguard the reputation of financial services business and industry.

2.2 Importance and the Scope of the Study

Given our discussion so far, and for the interest of financial advisory industry stakeholders, we believe it is important to scrutinise the legitimacy of the current AR licensing model using a theoretical model to obtain some scientific validation and verification. Despite the legislation regulating advisers through third-party licensees to protect the public, the transgressions list continually grows (Coorey and Eyers, 2015; Mennen, 2014; Ferguson, 2016). In recent years, to reduce more wrongdoings, attention focussed on the inherent conflicted remuneration of financial services (Batten and Pearson, 2013). This focus on remuneration included consideration by scholarly researchers (Kingston and Weng, 2014; Serpell, 2008; Moutsopoulos, 2005), inconclusive parliamentary debates on public record (Commonwealth of Australia, 2014b; Commonwealth of Australia, 2014f) and government inquiries (Parliamentary Joint Committee on Corporations and Financial Services, 2009; Parliamentary Joint Committee on Corporations and Financial Services, 2014), media commentaries (Ferguson, 2015; Santhebennur, 2015) and public submissions during consultation phases of the Australian inquiries into financial advice (Kearney, 2014; Morris, 2014) leading to new remuneration legislation (Commonwealth of Australia, 2001).

Yet, Valentine (2008) claimed conflicts of interest from affiliation to product issuers is the reason for the contraventions. The regulator ASIC, the Ripoll Inquiry PJC and some Australian government officials (Banister *et al.*, 2013, p.1436; Vickovich and Garber, 2014; Parliamentary Joint Committee on Corporations and Financial Services, 2009) tentatively agree. Unsurprisingly, is the prolific questionable popular and professional media debate (Kennedy, 2012; Pokrajac, 2014; Johnston, 2014) around conflicts of interests from affiliations to product issuers. Unsubstantiated negative media commentary (Taurian, 2016; Santhebennur, 2016; Santacruz, 2016; King *et al.*, 2016; Cho, 2016; Vickovich and Garber, 2014; Vickovich, 2014b; Vickovich, 2014c; Vickovich, 2014a; Pokrajac, 2014) around conflicts from affiliations linked the licensing model. On the available evidence stakeholders neglected obtaining sound evidence ruling out whether (or not) the root of the problem contributing to the transgressions lies with the potential conflicts from affiliations between ARs and their third party licensees. Merely focusing on remuneration is arguably misguided.

On the existing available evidence, it seems reasonable to suggest the legitimacy of licensing advisers through third-party licensees affiliated to product issuers is important politically, especially when the licensing model could be a potential source of the lack in public confidence and trust (Taylor *et al.*, 2013). Thus, potentially stopping over 80 per cent of Australians to seek out financial advice (Ap, 2011; Australian Securities and Investments Commission, 2016a). During the Murray Inquiry, the appropriateness of outsourcing adviser licensing to third-party aligned licensees was questioned (Vickovich and Garber, 2014). Based on a recommendation by the Ripoll Inquiry (Parliamentary Joint Committee on Corporations and Financial Services, 2009), the feasibility of implementing individual licensing and independence was only briefly considered during this inquiry's submission phase (Commonwealth Government, 2014; O'Brien and Gilligan, 2014). ASIC believed licensing at the individual level or via a professional standards board is not an appropriate solution, instead opting for retaining co-regulation with licensee institutions (Tyson-Chan, 2006; Australian Securities and Investments Commission, 2012a). As a rebuttal Vickovich (2014a) reported, the SMSF Professionals' Association of Australia (SPAA) asked for a new licensing system to encourage independent advisers, akin to the Registered Independent Advisor regime in the United States. Likewise, journalist Taylor (2014) stated that Financial Planning Association (FPA) Australia is focussed on encouraging policymakers to accept a so-called Self-Regulatory Organisation (SRO). Bruce (2012, p. 344) observed, historically advisers never formally belonged to a profession nor were classified as professionals. Ostensibly, what is missing in the FoFA legislation is whether financial advisers are able to become a true profession in substance, like doctors, accountants and lawyers when they are not licensed in a similar manner. Initially, the legal profession adopted a self-regulatory model where its ethical standards are managed through legal professional associations, within law firms and barristers using the courts' rules (Parker, 2004). Accountants drew on the experience of lawyers to professionalise, according to Cooper and Robson (2006), by working together on an independence model (Carnegie and O'Connell, 2012). Surprisingly, Cull (2009) found no amount of legislation led financial advisers to professionalise via self-regulation. Serpell (2008) supported licensing individual advisers via a standalone licensing or registration system separate from financial institutions. ASIC argued self-licensing is difficult to achieve, because the competencies of advisers working in different financial services sectors diverged (Australian Securities and Investments Commission, 2012a). To the contrary Macey (2002b) argued, financial planning as a multidisciplinary profession in itself supports a standalone regulatory system. ASIC is not confident one industry body can effectively be disciplined enough to enforce a self-regulatory code across the different financial sectors (Australian Securities and Investments Commission, 2012a). Whereas Macey (2002a) reasoned as the financial planning discipline increasingly specialises, they must develop standards for comprehensive advice separate from specialities, along similar lines to medical boards responsible for reviewing medical specialities.

The difficulty with professionalising financial planning is, historically to this day, financial planning is rooted in product sales (Knutsen and Cameron, 2012). Cull (2009) was of the opinion this embedded sales culture is the reason accountants felt financial planning did not meet all the requirements of a true profession. Yet interestingly, the accounting profession incorporated ethical standards for accountants providing financial services into their APES 230 standards (Accounting Professional & Ethical Standards Board Limited, 2013). Then in 2015 Certified Practicing Accountants (CPA) formed CPA Australia Advice. In 2016 they successfully applied for their own AFSL and ACL. So CPA members who want to avoid the self-licensing responsibilities could become ARs and provide independent financial advice through CPA Advice (King *et al.*, 2016; Certified Practicing Accountants, 2015).

From early writings by Bamber and Iyer (2002), accountants were restructuring to provide other non-accounting services internationally. Some of the 200,000 professionally qualified accountants (Accounting Professional & Ethical Standards Board Limited, 2012) are repositioning and redefining financial planning within their self-regulatory model (Brown, 2008; Global Accounting Alliance *et al.*, 2016). Though Brown (2008) cautioned the accounting profession of the challenges ahead especially, as Westover (2012) warned, when maintaining their professional independence. Non-scholar Cho (2016) suggested many accountants were not applying for their own licenses. Instead they were referring financial planning clients to licensed accountants, financial advisers and licensees. Brown (2008) forwarded the view accountants positioning themselves to provide independent financial advice sets the accounting profession's and the public's expectations, as well as what financial advisers should be doing for their clients in the future. This redefinition, Lambert (2013) suggested, should significantly influence financial planning. Some scholars' (Bateman and Kingston, 2014; McMeel, 2013) consensus view was the Australian, United Kingdom (UK) and the United States (US) systems to license advisers parallel each other relatively closely, and they continually monitor developments taking place in each other's countries. Their respective advisory or financial institutions and agents are obligated to register with their respective regulators (ASIC , FCA , SEC , FINRA) (Bateman and Kingston, 2014; Burke and Hung, 2015; Zabel, 2010; Financial Conduct Authority, 2015). Common in all these countries is their financial advisers are all regulated by their regulators via third party affiliates or principals. Arguably, conflicts of interests from affiliations to their third party institutions who may also be product issuers plagues them all. For the sake of this discussion, investigating the legitimacy of AR licensing via third parties using a theoretical model is imperative, given that Burke and Hung (2015) documented that research on the impacts of FoFA is scant.

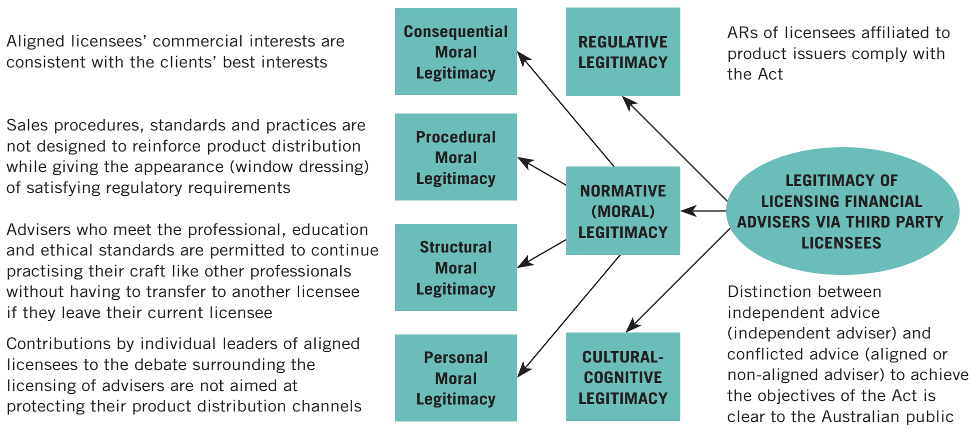
3.0 Suchman's Theoretical Legitimacy Framework

Against this backdrop, intellectual attention shifts to applying legitimacy theory in financial planning practice and profession. Díez-Martín *et al.* (2013) and other scholars (Pellegrino and Lodhia, 2012; Sonpar *et al.*, 2010; Bitektine, 2011) observe that legitimacy studies are evident since the mid-1990s. Internationally, empirical work in legitimacy theory focused on inter alia, organisational theory (Díez-Martín *et al.*, 2013), management theory (Bitektine, 2011), economic theory and political science (Ellis, 2006; Gualini, 2004). Some legitimacy theorists, studied specific industry fields, such as mining (Pellegrino and Lodhia, 2012), telecommunications (Low, 2010), healthcare (Sonpar *et al.*, 2010), while others have investigated specific professions, like accounting (Andon *et al.*, 2014; Fisher *et al.*, 2007). Evidence of legitimacy research investigating financial planning service is lacking. In an attempt to address this gap in the literature, Suchman's (1995) complete legitimacy framework is applied here. In contrast to most legitimacy research, where Doh *et al.* (2010) claimed, only one or two legitimacy criteria are often examined at a time. Suchman (1995, p. 574) defined legitimacy as a "generalized perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs, and definitions". Therefore, the legitimacy of ASIC licensing ARs through third party licensees as specified in Chapter 7 of the Act (Commonwealth of Australia, 2001), should be perceived as "desirable, proper or appropriate" (Suchman, 1995, p. 574), when operating within the financial advisory industry's "socially constructed system of norms, values, beliefs, and definitions" (Suchman, 1995, p.574).

Theoretically speaking, understanding the legitimacy of the AR licensing model is dependent on examining Suchman's (1995) three broad, yet specific, types of legitimacy: (1) pragmatic (regulative); (2) normative (moral); and (3) cultural-cognitive. Figure 1 visually represents these legitimacy types conceptualised within financial planning theory. Importantly, Scott (2014) highlights entities exhibiting regulative, normative and cultural cognitive legitimacy increases their survival rates.

Figure 1: Legitimacy of the Current Authorised Representative Licensing Model

Note: Adopted from Suchman (1995) and Scott (2014).



In the case of pragmatic legitimacy, Suchman (1995) outlines this as the perception of the social support for an entity's activities operating within some socially acceptable system. From existing literature, regulative legitimacy, derived from pragmatic legitimacy (see, Chen and Roberts, 2010; Rao, 2004), occurs when regulatory entities use laws to create a perception of trust and confidence in society (Kostova and Zaheer, 1999) by regulating behaviour (Scott, 2013, p59). Seemingly, the "tool of legitimation" (Chen and Roberts, 2010, p.654) ASIC uses to co-regulate individual advisers via licensees is the Act (Tyson-Chan, 2006, Australian Securities and Investments Commission, 2012a). ASIC's social control (Santana, 2012; Yeung, 2009) over licensees and their ARs gives the licensing model its "right to exist" (Pellegrino and Lodhia, 2012, p.70), which is being tested by the loss in public confidence and trust. Theoretical (Scott, 2014) and empirical legitimacy studies (for example, Bitektine, 2011; Chelli *et al.*, 2014) showed entities gain and maintain regulative legitimacy when a perception of compliance with the legislation is present. On these grounds, determining empirically licensing's regulative legitimacy involves examining whether (or not) a perception of licensing advisers through third-party aligned licensees risks their advisers from breaching regulatory compliance, because of their licensees' affiliations to product issuers. If the ARs of aligned licensees comply with the Act, then the licensing can be perceived as legitimate (Figure 1). Verifying regulative legitimacy is imperative, because licensees and advisers will lose their reputations when breaches in compliance are discovered and makes headline news. Furthermore, the financial losses suffered by clients results in the public choosing to avoid seeking financial advice when the ensuing distrust sets in (Carlin and Gervais, 2012).

Legitimacy is not only about the “right to exist” (Pellegrino and Lodhia, 2012, p.70), but also what is judged as “the right thing to do” (Yeung, 2009, p. 286) morally. Therefore, normative (moral) legitimacy focusses on specific morals, values or ethics (Chua and Rahman, 2011; Chen and Roberts, 2010) of an entity’s goals, activities, structures, and/or outcomes, within a socially accepted (Johnson and Holub, 2003) and constructed value system (Bitektine, 2011). Australian financial planning professional associations and licensees shape the moral professional foundation for advisers. They interpret and implement the regulative rules using as their defence compliance (Carnegie and O’Connell, 2012) with the Act. Consequently, understanding the licensing model’s normative (moral) legitimacy requires scrutinizing the following sub-categories Suchman (1995) identified, and illustrated in Figure 1 above: (1) consequential; (2) procedural; (3) structural; and (4) personal.

Consequential moral legitimacy is the moral assessment of an entity’s socially valued outcomes (Suchman, 1995, p579). Data gathered during two ASIC reviews in 2011 and 2014 showed licensees’ main source of revenue were paid by fund managers or product issuers. In the literature, specifically aligned licensees are seen as “commercial businesses using advisers as a sales force” (Parliamentary Joint Committee on Corporations and Financial Services, 2014, p.24) to support shareholder theory (Kofman and Murawski, 2015, Lindorff and Peck, 2010, Griffiths, 2007, p.231) instead of stakeholders’ interests to develop social capital (Lindorff and Peck, 2010). Yet ASIC expects licensees and their ARs when managing conflicts of interests to put the client’s best interests first, even if not in the licensees’ or the licensees’ shareholders’ interests (Australian Securities and Investments Commission, 2016d). Conflicts of interest can be managed through disclosures (Serpell, 2008) and complying with the best interests duty, however Bruhn and Miller (2014) suggested this was not always done effectively.

Maclean and Behnam (2010) maintained financial institutions struggle to manage their regulatory compliance when the legal requirements conflict with or compromise their commercial activities. They indicated resolving this tension is critical to ensure legitimacy. In support, Lindorff and Peck (2010) wrote legitimacy requires managing these institutions for the benefit of all stakeholders, not just shareholders and employees. Therefore, whether (or not) licensing advisers through third-party aligned licensees creates tension between the licensees’ commercial interests and their clients’ best interests should determine the existence of consequential moral legitimacy. The premise is if aligned licensees’ commercial interests are consistent with the clients’ best interests, then licensing advisers through third-party aligned licensees is more difficult to challenge (Figure 1) and existing licensing retains consequential legitimacy. Establishing this is important, because Griffiths (2007) suggested focussing on immediate shareholders profits results in negative social costs to retail clients. Furthermore, Bearden (2002) pointed out financial interests can compromise advisers’ professional judgement, hence damaging the adviser-client professional relationship of trust notwithstanding the quality in the advisers’ work. Bearden (2002) contended a defining characteristic of any profession is conflicts of interests matters and should be avoided (Bearden, 2002). Any incompatibility between the institutions’ values and the professional values of the adviser manifests into institutional-professional conflicts, which requires compromise (Bamber and Iyer, 2002). In light of Australian policymakers’ push for professional standards (Parliamentary

Joint Committee on Corporations and Financial Services, 2015), English (2008) indicated to decrease the likelihood of experiencing this conflict, professionals should work in institutions sharing the same values and goals as the profession.

Procedural moral legitimacy is the moral assessment of the entity's socially acceptable practices, standards and procedures (Suchman, 1995, p. 579). In legitimacy theory, decoupling (Cole and Salimath, 2013) occurs where formal policies, processes and rules for legislative compliance differ from actual practice (Carruthers, 1995) and behaviour (Scott, 2014). Unconfirmed are allegations licensees implement legislated practices, standards and procedures reinforcing the advisers' product distribution role (Parliamentary Joint Committee on Corporations and Financial Services, 2014, p.24), which Sampson (2010) contended is sometimes without detection. Secondary non-academic sources claimed Australian aligned licensees limited their ARs to recommendations of mainly products they select and assess for the approved product list (Australian Government, 2014, Sheehan, 2016). Additionally, Lee (2007) suggested licensees and their representatives are linked to a deceptive sales culture, where these representatives are used to cross- and up-sell specific products from the approved product lists (APL). West (2009) alleged there is no reason why aligned licensees would want their representatives to retain, recommend or include on their APLs a competitor's financial products. ASIC found in a review the statutory fiduciary duty obligations failed to impact most institutions' APLs, except for a few amendments such as a reduction in the number or types of products on the list (Australian Securities and Investments Commission, 2014). Newnham (2012) maintained licensees are adept at keeping in place distribution channels masquerading as sources of advice. Except for the inductive qualitative analysis by Maclean and Behnam (2010) of a US financial services organization where widespread deceptive sales practices occurred, there is a deficiency in Australian research empirically validating or verifying the above claims.

In this aspect, future research should empirically verify the licensing's procedural moral legitimacy by examining the existence of perceptions that licensing advisers through third-party aligned licensees result (or not) in deceptive sales procedures, standards and practices to reinforce product distribution, while giving the appearance (window dressing) of satisfying regulatory requirements. Should this not be the case, then the licensing demonstrates procedural legitimacy (Figure 1). This information is significant, because Maclean and Behnam (2010) demonstrated decoupling the compliance program from practice results in the loss of external legitimacy, because internal legitimacy of the formal compliance program is damaged, which then culminates in unethical practices becoming institutionalized. An Australian study by Smith (2009) suggested an ethical culture promoting ethical behaviour within AFSL licensees is dependent on the presence of formal and informal systems and procedures.

Suchman (1995) defined structural moral legitimacy as the moral evaluation of adopting formal structures acceptable to society. Presently under the existing licensing regime a licensee appoints, authorises and regulates multiple representatives (Australian Government, 2014). Significantly, doctors may prescribe certain pharmaceutical products they favour (Everingham, 2014), but they are not licensed to practice their craft through these third-party pharmaceutical institutions. Lawyers, doctors and accountants work for corporate commercial institutions but they retain autonomy and control within their job role (Rubin, 2015). When lawyers (Arteta, 2016; Australian Bar Association, 2016) and doctors (Medical Board of Australia, 2012) leave their workplace they retain their professional status, their license to practice and ability to work without needing to transfer to other corporate institutions. Similarly, when accountants leave public practice they can retain their registration with their professional associations (Bamber and Iyer, 2002; Institute of Chartered Accountants of Australia, 2012). Bearden (2002), Cheetham and Chivers (2005) set out numerous characteristics of a profession, which is further supported by a substantial body of literature (see for example, Watts and Murphy, 2009; Frumento and Korenman, 2013). Through their independent bodies such as the Medical Board of Australia, Law Societies of each State, Australian Bar Association, Institute of Chartered Accountants Australian Board and the CPA Board, Tom (1995, p.3) noted each new entrant into the profession must meet their specific entrance and ongoing requirements. These characteristics, Cheetham and Chivers (2005) held, provides a profession its legitimacy. In contrast, Australian financial advisers are not self-regulatory, collegial, independent, structured, hierarchical and client-focussed (Riaz *et al.*, 2011). Nor do they operate within a recognised professional body with status within a society as observed in other professionals (Riaz *et al.*, 2011). Unlike other professionals, Schuchardt *et al.* (2007) confirmed financial advisers do not control their specialised knowledge and skills. Clayton Utz Financial Services Reform Group (2002) observed this included qualified Certified Financial Planners® (CFPs®) who lose their professional status to earn a living once they leave a licensee, unless they sign up with another licensee. The available evidence seems to suggest even highly qualified and professional advisers lack professional autonomy (Smith *et al.*, 2009) similar to other professionals under the present licensing regime to practice their craft.

The present debate in the media revolves around advisers being viewed as quasi-employees controlled by their licensees (Pokrajac, 2014). This may be a problem, because Smith *et al.* (2009) suggested licensees lack the breadth within their systems and procedures to ensure an effective ethical climate and culture for professional advisers. Interestingly, Young and Thyil (2014) found during their qualitative study some financial institutions' leaders hold the view individual's behaviour cannot be regulated, only structures can be put in place for individuals to buy into. The premise here is the Australian financial advisory industry is buying into a formal structure without critical assessment or evaluation. So, to empirically evaluate the licensing model's structural moral legitimacy requires examining whether ARs, meeting all the professional standards, are permitted to continue practicing their craft as a professional adviser (they retain their professional status), like other professionals, without requiring to transfer to another licensee or become self-licensed when they leave their current licensee. On these grounds, if professionally qualified advisers are permitted to continue practising their craft, like other professionals, then the licensing model shows structural legitimacy. This is important, because with proposed new Australian legislation, policymakers are trying to professionalise financial planning (Parliamentary Joint Committee on Corporations and Financial Services, 2015). Furthermore, advisers licensed through a third party commercial rather than a professional institution may, possibly, act as a disincentive for potential new entrants to pursue a career in financial planning. Particularly, when despite meeting the requirements of a true professional, they are no longer legally authorised to provide financial advice, unless they transfer to another licensee once they leave a current licensee. This paper's views are grounded on the assumption that if financial advisers are to become a true profession, then they should be structurally licensed in a similar manner to other professions.

Personal moral legitimacy is achieved through the moral and social evaluations of charismatic individuals' roles (Carnegie and O'Connell, 2012; Goretzki *et al.*, 2013) exerting their personal influence to dismantle or create new entities (Suchman, 1995). Non-scholarly literature makes allegations about certain key people as members of seniority of multiple diversified licensees (Vickovich, 2014c) and financial planning professional bodies (Vickovich, 2014b) with varying stakes (Commonwealth of Australia, 2014d) presenting as committee members on panels to respond as lobby groups at roundtables (Vickovich, 2014c), private and public hearings making submissions (Australian Bankers' Association Inc, 2014) to persuade or dissuade the government to increase or decrease the amount of legislation. Although not empirically assessed and substantiated, each contributing different, sometimes opposing recommendations to the debate surrounding regulating individual advisers, while simultaneously implementing competing training, accreditation and professional recognition programs (Reese, 2011). Young and Thyil (2014) suggested that financial institutional leaders' duty and moral obligation are to all stakeholders, not only shareholders, to be doing the right thing to obtain their implicit or explicit consent to operate. The extent stakeholders provide this consent they claimed provides these institutions the legitimacy to operate.

Legitimacy is not only about the "right to exist" (Pellegrino and Lodhia, 2012, p.70) and the "the right thing to do" (Yeung, 2009, p. 286) to meet legal and moral obligations. Additionally, cultural-cognitive legitimacy is a perception of shared understanding, activities, norms and beliefs (Santana, 2012) with the aim to perpetuate an institutional order (Kury, 2007) based on cognition or awareness (Meyer, 2007). With assumedly shared common understandings, activities, norms and beliefs with their clients and the media, ARs under the their licensees' control, operationally enact the rules (Kury, 2007) as specified in the Act. In other words, with cognitive legitimacy it is taken-for-granted (Carnegie and O'Connell, 2012) "this is how we do things" (Kury, 2007, p.373) (Figure 1). Namely, ASIC appoints, authorises and regulates individual advisers through third party licensees. Simply, with the legislation clients and their advisers should have as Scott (2014) notably theorises a shared understanding as to 1) who they are (identity), 2) what is expected of them (role) and 3) how effective they are (performance). With identity Arman and Shackman (2012) purported the Australian general public can distinguish between the different designations in the medical, legal and accounting professions, yet they cannot do the same for advisers. With adviser roles, some government officials contended, Bernie Ripoll's FoFA reform recommendations provided a strong legal framework distinguishing advice from sales (Commonwealth of Australia, 2014c). As a refutation, North (2015) explained, because the definition of financial advice is narrowly tied to product, the Act does not assist in clearly distinguishing the delivery of independent professional advice from financial product sales advice. Accordingly, clients and their advisers should have a shared understanding of the advisers' identity and role so the objectives of the Act can be achieved (performance). For purposes of this paper, the objectives include inter alia protecting the public, aligning the adviser-client interests, managing, controlling or avoiding conflicts of interests and encouraging competition between financial services providers (Corbett, 1999, Ap, 2011). Perkins and Monahan (2011) wrote achieving these objectives is important for the sake of public support, trust and confidence in the financial advice industry.

In light of the previous discussion, personal moral legitimacy of the licensing model is evident, if the distinction between independent financial advice (independent adviser) and conflicted financial advice (aligned adviser) to achieve the objectives of the Act is clear to the Australian public (as depicted by Figure 1). This is important to establish, because Rubin (2015) argued confusion around titles and designations undermines the trust society requires to justify granting individuals professional autonomy, necessary to qualify as true professionals.

4.0 Future Research Directions and Implications

The existing literature seems to take a negative view on advisers being appointed, authorised and regulated through third party licensees. It seems, the difficulty in obtaining a balanced view, is due to the deficiency in financial planning theory and availability of empirical evidence that is supported by epistemologically sound conceptual frameworks to understand the legitimacy of the licensing model. Not only is the legitimacy of the current licensing model for individual advisers inconclusive and under-researched, but also whether licensing advisers through third party licensees is a significant problem is unclear. Consequently, in an area where no prior research is evident, we apply an established theoretical framework to examining the legitimacy of the current AR licensing model. The framework provides an opportunity to develop a standard instrument for further empirical analysis using dimensions such as regulative, consequential, structural, procedural, personal and cultural-cognitive as criteria to capture the perceptions, for example of ARs, regarding the desirability, proprietary, or appropriateness of the current AR licensing model. The application of Suchman (1995, p. 574) theory will not only advance financial planning theory, but also provide a scholarly platform for future empirical research to provide policymakers, domestically and internationally, with initial data and analysis tool to assist with policy decisions around the regulation of individual advisers.

5.0 Conclusion

Within the predominantly FoFA legislative framework, Australian financial advisers are appointed, authorised and regulated through third party licensees as specified in the Commonwealth Corporations Act 2001. Licensing advisers in this manner is apparently confronted by mainly negative mixed messages from various stakeholders without any compelling scientific-based evidence of what is appropriate for this emerging profession. Without enough peer reviewed financial planning literature supported by epistemologically sound definitions, principles, models, norms and decision rubrics, it is difficult to present a balanced view in the paper. No academic researchers have yet attempted to define, model and measure the legitimacy of the licensing model, because seemingly the conceptual construct is difficult to define and quantify. The proposed rectification is applying Suchman's theoretical legitimacy framework as a theoretical foundation to obtain conclusive evidence to validate whether (or not) the licensing model is legitimate. Not only will this advance financial planning theory, but will also raise questions for further investigation. Furthermore, empirical data collected using this framework will provide policymakers concrete evidence to make decisions around licensing individual advisers without having to rely on unconfirmed claims. Until empirical research based on a theoretical construct is undertaken, a vacuum in financial planning scholarly theory, empirical research literature, as well as the myths and unsubstantiated arguments surrounding licensing advisers through third party licensees will remain. This study therefore proposes Suchman's legitimacy theoretical framework as an important theoretical contribution to empirically evaluate and verify the legitimacy of the current licensing model for individual financial advisers.

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