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Mr Andrew Choi
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By email: acesstoadviceconsultation@asic.gov.au

Dear Andrew,

Consultation Paper 332 - Promoting access to affordable advice for consumers

CPA Australia represents the diverse interests of more than 166,000 members working in over 100 countries and regions around the world. We make this submission on behalf of our members and in the broader public interest.

CPA Australia welcomes ASIC's initiative in undertaking the Unmet Advice Needs project and in particular, this consultation to understand the barriers to providing good-quality affordable financial advice and how ASIC and the financial planning industry can better promote access to affordable quality advice.

However, ASIC's sphere of influence through its regulation under Corporations Law cannot be considered in isolation. To fully understand the barriers to providing affordable, accessible quality advice, the regulation of professional advice must be considered holistically. In particular, the overlap, duplication and interaction with other regulatory regimes, such as the Tax Agents Services Act (TASA), including the Code of Professional Conduct, and the Financial Adviser Professional Standards regime, including the FASEA Code of Ethics (noting the Government's recent announcement of the wind-up of FASEA).

CPA Australia's concerns regarding the impact of these overlapping regulatory regimes on consumers and advisers resulted in the establishment of the Regulatory Burden project, which has produced the [Regulatory Burden](#) Report in 2019 and the [Value of Advice](#) Report in November 2020.

The Regulatory Burden Report demonstrated the rising cost, complexity and time burden faced by professional advisers given the increasing compliance and regulatory obligations associated with providing quality professional advice. This research report found that on average a sole practitioner firm employs 1.6 FTE staff solely to meet his/her compliance obligations. Further, almost one in four (22.9 per cent) of those surveyed were spending 20 per cent or more on compliance costs in the past financial year. This additional time and resources required to deal with compliance is ultimately passed on to consumers and Small to Medium Enterprises (SMEs), impacting both accessibility and affordability of advice.

This impact is also forcing many professional accountants to reconsider their offering. Of those providing financial planning advice, one third (36.0 per cent) were reconsidering their offering, as a direct result of the burden from complex legislative and regulatory framework. This is despite the increasing demand for financial planning advice from both consumers and SMEs, as evidenced in the report, and pressure on traditional accounting service areas from regulation, automation, technology and competition.

A key finding in the Value of Advice Research is that consumers and SMEs see financial advice very differently to lawmakers. For the former, it's heavily anchored to their goals. Budgeting and saving, making better investment decisions, retirement planning and paying off debts are all activities which clients consider to be professional advice and something that a qualified professional



should be able to help them with. Consumers and SMEs consider this as advice and consider financial planning advice only as a subset of the broader advice piece.

The way professional advice is regulated needs to be rethought, shifting from a system defined by the industry and regulators to a client-centric model that serves the interests of individuals and SMEs. Legislators and regulators must look beyond an approach to regulation based on products to one that is centred on how clients view and use professional advice.

The four principle recommendations of a client-centric model include:

1. Reflect client goals, not product
2. One regulatory regime, one regulator
3. Single code of conduct
4. Individual registration of advisers

CPA Australia believes that the current regulatory reforms, including the establishment of a single disciplinary body, provides an opportunity to evolve the currently complex—and at times conflicting—regulatory environment, to one that is focused on the client and which caters for their advisory needs and expectations.

Feedback on Consultation Paper 332

To promote engagement in this consultation, CPA Australia distributed the CP 332 to members via our newsletters, encouraging them to respond to ASIC. We also consulted with our Retirement Savings Centre of Excellence and Financial Planning Working Group, which consist of a cross-section of financial planning practitioners from limited advice/authorisation financial advisers, authorised representatives of large Australian Financial Service (AFS) licensees and principals of multi-discipline practices that hold their own AFS licence.

The overwhelming feedback we received from members is that the compliance burden is the primary barrier to being able to provide affordable, accessible advice that meets consumers' needs. Members consistently described a culture that is primarily focussed on compliance and risk-minimisation for the adviser and/or AFS Licensee. The time spent on record-keeping and documentation of advice has increased considerably as advisers endeavour to meet the expectations of ASIC, their AFS licensee, compliance staff or external compliance consultants and auditors. For example, the purpose of a Statement of Advice (SOA) has become to protect the advice provider and AFS licensee rather than inform and support the client make a decision about accepting the recommended advice.

The expectation exists that advisers will consider alternative scenarios when recommending a course of action. Advisers fear that if they inadvertently omit something from a SOA, or do not consider every possible scenario, they may be penalised or have action taken against them if the advice is reviewed at a later point in time—including many years after the advice has been provided—and is found to have not fully met the client's needs.

This expectation is driven by the need to comply with the FASEA Code of Ethics, particularly Standards 5 and 6, where all recommendations provided to a client must be in the best interests of the client and appropriate to the client's individual circumstances. Also, the adviser must be satisfied that the client understands the advice, benefits, costs and risks of the products recommended; and the adviser must take into account the broad effects arising from the client acting on the advice and actively consider the client's broader long-term interests and likely circumstances. This is required, irrespective of the scope of the advice, such as single-issue or scaled advice.

A good adviser valued by the client is often a 'people person', however, the regulation is designed for technicians. Advisers may be able to recommend a particular course of action that they believe will be appropriate to their client's needs at that point in time based on their experience and knowledge, yet they now spend more time providing detailed modelling of multiple scenarios to demonstrate the outcomes of alternative advice scenarios. This is at odds with the way many other professions operate and arguably does not support the adviser working to build rapport and trust with the client.

This perception or expectation is reinforced by ASIC enforcement action. Recent action stemming from the Financial Services Royal Commission has looked back at advice recommendations made several years prior, as have previous ASIC shadow shops. It is easy to look back at advice in retrospect and determine how appropriate a form of advice may have been with the benefit of hindsight.

Advisers are continually "second guessing" themselves, concerned that they may have missed something, that their advice will never be fully compliant, and/or that if a piece of advice is reviewed at a later point in time it may be considered inappropriate if

the outcomes or the client's likely future circumstances did not eventuate. Advisers can only provide advice in good faith based on the information they are provided and the circumstances at the time. They cannot predict the future. As a result, the time spent on documenting advice recommendations and creating SOAs has, at least, doubled over recent years and has reduced productivity by a commensurate amount. Even small advice practices face significantly increased compliance costs, now often employing a full-time resource purely to manage compliance.

While ASIC guidance does not discourage shorter SOAs, the reality is, as noted earlier, that SOAs are used as a compliance document to protect the adviser, resulting in lengthy documents that the average client may have trouble interpreting and understanding as a stand-alone document without also relying on trusting the explanation of the adviser and possibly a separate letter of advice. Arguably, this impacts the accessibility and affordability of advice.

It is common practice for authorised representatives to have their draft SOAs vetted by their AFS licensee before they can provide the final version to the client. This process can now take weeks and even months. One authorised representative provided an example where their draft SOA must be approved by both their AFS licensee's vetting team and their compliance team before it can be presented to the client. It was not uncommon for further delays in this process where each team had conflicting advice which needed to be resolved. These increased compliance processes have resulted in a significant increase in AFS licensee fees, where the fee for a limited advice authorisation is in the vicinity of \$50,000 annually.

The FASEA professional standards regime for advisers places even more responsibility on the individual adviser. However, many advisers rely on the authorisation of an AFS licensee, thereby creating a fundamental conflict where the adviser is responsible for their conduct, but their advice must be approved by another entity. This relationship results in unnecessary duplication and/or overlap of responsibilities, time delays and cost.

While ASIC RG 244 provides a framework for providing single issue advice, this is arguably overridden by the FASEA Code of Ethics requirement to consider the broad effects of the advice and the client's broader long-term interests and likely circumstances. Given this conflict, many advisers perceive that it is too difficult to provide single issue, limited or scaled advice. Their starting point is to develop a holistic financial plan encompassing all likely scenarios and will only 'de-scope' the advice if they are able to provide significant justification as to why particular information, circumstances or issues would be left out and why certain scenarios were not considered. Even advisers whose starting point is providing scaled advice will overcompensate by providing excessive documentation to demonstrate why certain scenarios or information were not considered.

The overall outcome of the issues and practices identified above is that advisers' costs continue to increase, ultimately being passed onto clients. Also, the advice process can take a considerable period of time and advice documentation is presented to protect the adviser not meet the clients' needs.

In relation to the use of technology, advisers do not see robo-advice being able to replace the advice process. However, they are increasingly using technology to supplement and support the advice process. For example, by using technology to outsource what information gathering they can back to the client, such as the client fact find, recording or updating a client's risk profile, and recording client meetings. Importantly though, many consumers and SMEs strongly value the personal relationship of their professional adviser, or they may not have the financial literacy to solely rely on a technology-based solutions for receiving advice for their circumstances.

Key observations

- The compliance burden should be commensurate with complexity of advice.
- The limited AFS licence framework has failed, as it has for many smaller SME AFS licensees, as they cannot sustain the cost of compliance and regulatory burden they endure from a legislative framework that has been consistently added to for more than a decade. This is further evidenced by the exodus of the many of the institutional AFS licensees who have noted the layers of regulation have made personal financial planning advice unprofitable for their business.
- There must be a transition away from the existing AFS licensee model to individual registration of advisers, to empower advisers to be solely responsible for their conduct and advice, and where AFS licensees provide a support role to advisers, being responsible for product manufacturing and distribution.

Consumer protection is fundamentally important. However, it must be balanced with the commercial realities of running a business. As one adviser said, "so much time is spent getting the compliance right, there is little time left for the advice". For many advisers the pendulum has swung too far in one direction and the costs of compliance and record keeping are overwhelming, prompting their decisions to exit the industry.

This increasing regulatory burden needs to be holistically examined to identify, understand and change the complexities and inefficiencies of the current regulatory framework.

We look forward to continuing to contribute to the consultation on improving access to affordable, quality professional advice and furthering the discussion in the stakeholder roundtables.

If you have any queries do not hesitate to contact Michael Davison, Policy Strategist - Retirement Savings and Advocacy at michael.davison@cpaaustralia.com.au or on 02 6267 8552.

Yours sincerely,



Dr Gary Pflugrath
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