

Advisers, Brokers and Redress Unit
Commonwealth Treasury
Level 29, 201 Kent Street
Sydney NSW 2000

28 May 2021

Dear Treasury,

Following our roundtable meetings with Treasury and other stakeholders on [Consultation Paper 332](#) *Promoting access to affordable advice for consumers* (CP 332), we **enclose** with this letter a memo which sets out key law reform suggestions that have been made by respondents to CP 332.

We will forward to you the submissions we have received to CP 332 separately.

Executive Summary

Through CP 332, we sought to gather information to better understand issues relating to the supply of advice and any impediments that industry participants face when providing good-quality affordable personal advice. We have been particularly interested in better understanding the issues or impediments that are within ASIC or industry's control to act on.

We received a total of 466 valid submissions to CP 332. Respondents comprised of 242 financial advisers, 40 licensees and 111 other stakeholders (including 16 industry associations, 6 superannuation funds, 2 consumer groups, 2 risk insurers, 2 academics, 45 accountants and 6 legal firms/lawyers). 68 respondents identified as both an adviser and licensee.

In response to feedback from CP 332, ASIC is looking to progress a number of initiatives. Commission will ultimately decide on the initiatives that we take forward based on the resources we have available.

Please do not hesitate to contact us if you would like any further information.

Yours sincerely

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Senior Manager, Financial Advisers

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Memo

TO: Commonwealth Treasury

FROM: s 22, Senior Manager, Financial Advisers; s 22, Senior Lawyer, Financial Advisers; s 22, Lawyer, Financial Advisers; s 22, Analyst, Financial Advisers; s 22, Graduate, Financial Advisers.

RE: Briefing for the Commonwealth Treasury on law reform suggestions raised in submissions to Consultation Paper 332 *Promoting access to affordable advice for consumers* (CP 332)

DATE: 28/05/2021

Overview

1. This memo is to update Treasury about key law reform suggestions that we have received through submissions to CP 332.

Limited Advice**Guidance on limited advice**

2. In CP 332, we asked respondents about our guidance in [Regulatory Guide 244](#) *Giving information, general advice and scaled advice* (RG 244). Respondents raised a number of issues with RG 244, including that it is too long, clashes with the FASEA Code of Ethics and that advisers' licensees policies don't allow for RG 244 to be followed.
3. Broadly, respondents did not raise specific law reform suggestions in response to questions about our guidance. However, many respondents stated that the multiple layers of regulation between differing government agencies (FASEA, AFCA and ASIC) in the financial advice industry has made it difficult for advisers to clearly understand their obligations. Respondents suggested that one government agency should govern the financial advice industry, with some respondents suggesting that the Single Disciplinary Body take up this role.

Barriers to providing limited advice

4. In CP 332, we asked respondents for their feedback on the barriers they face when providing limited advice to consumers. In summary, respondents raised the following barriers to providing limited advice:

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- a. Limited advice is costly to provide, and is no more cost effective to provide than comprehensive advice;
 - b. The regulatory requirements for comprehensive and limited advice are the same;
 - c. The regulatory requirements for limited advice are unclear;
 - d. The FASEA Code of Ethics does not permit the provision of limited advice to consumers; and
 - e. Advisers are restricted from providing limited advice by licensees or other parties.
5. In light of these barriers, respondents raised several law reform suggestions, including:
- a. Government should impose lower disclosure requirements when providing limited advice. Specifically, advisers should only need to use an ROA (instead of providing an SOA) when giving limited advice.
 - b. Government should relax the scoping process for limited advice under the safe harbour steps of the Best Interests Duty (BID). This is in light of concerns that the BID requires a holistic consideration of a client's circumstances to properly scope the advice, even though the client comes to an adviser seeking advice on a single topic.
 - c. Limited advice should be defined separately from comprehensive advice under the Corporations Act and subject to lower regulatory requirements.
 - d. The FASEA Code of Ethics should be amended to ensure that advisers can provide limited advice. Respondents specifically wanted FASEA to amend or remove Standard 6 of the Code.

Statements of advice

6. In CP 332, many respondents raised issues with the provision of Statements of advice (SOAs). SOAs were noted as a key cost barrier to providing affordable advice. Key law reform suggestions that were raised to address this issue include:
- a. The requirement to give an SOA should be removed altogether and replaced with ROAs. Other respondents suggested that the requirement to give an SOA should be removed for specific types of advice (e.g. limited advice, strategic advice and superannuation advice).
 - b. A new 'limited advice SOA' should be introduced which is only required to include information about the subject matter of the advice, relevant consumer circumstances, questions asked by the adviser, the analysis conducted for the advice and

recommendations. This would replace the requirement to provide a "full" SOA for limited advice.

Cost of advice

7. In CP 332, we sought feedback on the issues that affect the affordability of personal advice in Australia. Respondents identified the following as key drivers that contribute to the rising cost of advice:
 - a. Rising overheads and fixed costs of running a financial advice business;
 - b. Rising regulatory and governance costs (many advisers cited the Industry Funding Levy as a key driver of cost); and
 - c. Conservative licensee policies and procedures requiring compliance above what is required by the law.
8. Respondents raised several law reform suggestions to address the rising cost of advice, including:
 - a. Restructuring the industry funding levy so that it applies to large licensees that have exited the financial advice industry (given many of these licensees are responsible for historical misconduct which ASIC is taking action against). Respondents also supported removing the industry funding levy altogether.
 - b. Disclosure documents around fees are duplicative (written consent, FDS and Statement of Advice). Government should reduce red tape by only requiring one document to disclose this information.

Strategic advice

9. In CP 332, we consulted on 'strategic advice', which we defined as advice that addresses a client's needs and goals either:
 - a. without making a financial product recommendation to a client; or
 - b. by only making a recommendation about a class of financial products.
10. Nearly all respondents thought that Australians could benefit from more strategic advice. However, respondents raised several issues with the provision of strategic advice:
 - c. There is uncertainty about the legal requirements with the provision of strategic advice;
 - d. The boundary between product advice and strategic advice is uncertain;
 - e. Licensees limit the ability of advisers to provide strategic advice; and

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- f. Respondents would like more ASIC guidance on providing compliant strategic advice.
11. Key law reform suggestions raised to address issues around strategic advice include:
- a. The regulation of strategic advice should be separated from the regulation of financial product advice. This means defining strategic advice as a separate class of advice (including strategic advice on a class of products) that is subject to lower regulatory requirements.
 - b. Government should exempt strategic advice on superannuation products and retirement outcomes from the definition of personal advice.

Digital advice

12. In CP 332, we consulted on digital personal advice, which we defined as advice the provision of automated financial product advice using algorithms and technology, without the direct involvement of a human adviser.
13. Most respondents do not provide digital advice services and said that they did not intend to provide it in the future. Key issues identified with digital advice included that there was a lack of demand for this service, consumers prefer seeing a human adviser and that there are compliance concerns with providing this advice. However, respondents saw a great role for technology to support the advice process.
14. Respondents did not raise law reform suggestions in relation to digital advice and broadly sought for ASIC to promote the use of technology to support the advice process (e.g. applying technology to signing documents, preparing risk profiles and research tools).

General law reform suggestions

15. In CP 332, respondents were asked if they had any other comments to raise that were not covered off in response to other questions. They raised several law reform suggestions in response, including that:
- a. Government should reintroduce the exemption for accountants to give financial advice about an SMSF without an AFS licence (i.e. former regulation 7.1.29A of the Corporations Regulations).
 - b. The regulation of advice should move away from financial products and more towards client outcomes, given advice is not framed around products anymore. 'Financial advice' should be regulated separately from 'financial products'.

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- c. Government should pursue the regulation and registration of advisers directly at an individual level and not indirectly through a corporate licensee.