

4 March 2022

The Hon. Justice S C Derrington
President
Financial Services Legislation
Australian Law Reform Commission

By email: financial.services@alrc.gov.au

Dear Justice Derrington,

Interim Report A: Review of the Legislative Framework for Corporations and Financial Services Regulation

CPA Australia represents the diverse interests of more than 170,000 members, working in over 100 countries and regions. We have over 20,000 members in public practice in Australia with a number of them providing financial advice under an Australian Financial Services Licence authorisation or one of the limited exemptions provided under the Corporations Act and Regulations. We make this submission on behalf of our members and in the broader public interest.

Professional advisers are facing increasing regulation and compliance requirements. The majority of reforms and numerous reviews over the past two decades have, as highlighted by the ALRC's analysis, introduced additional rules and regulations governing the participants of the financial services industry demonstrably impacting on the affordability and accessibility of financial advice for consumers.

These rising costs and complex regulations are driving advisers out of the sector at a time when the need for financial advice is growing. Seeking professional advice is becoming more difficult and costly, pushing it out of reach for many consumers. 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 is centred on how clients view and use professional advice.

CPA Australia strongly supports the ALRC's review and welcomes the observations made in the first interim report. The report demonstrates the thoroughness of the review and the depth of complexity and challenges faced by the financial services industry.

We have had many interactions with the ALRC over the last 12 months providing input into the review directly through discussions and correspondence and through a number of industry consultations initiated by CPA Australia. As such, we will not provide an in-depth response to the first report.

Our primary areas of concern in relation to the regulation of profession advice include:

- The difficulty of navigating the complexity of the financial services law, particularly the multiple points of definitions, exemptions and modifications. There is an overwhelming need for a 'single source of truth' in order for professional advisers to confidently and consistently interpret how the laws apply.
- The definition of key concepts such as financial product advice, general advice and personal advice. In particular, there needs to be separation between financial product and financial advice to better facilitate the provision of financial advice that does not result in the recommendation of a financial product. Such reform could reduce the cost and improve accessibility to provide financial advice where no financial product recommendation is required.

- The role of Australian Financial Services (AFS) licensees. Does the dual AFS licensing/authorisation and individual financial adviser registration and responsibility requirements effectively balance the benefits for consumers against potential tensions between a financial adviser's obligations to their clients and their obligations to and set by the AFS licensee?
- The delineation between retail and wholesale clients and what safeguards should be provided to wholesale clients

The observations and recommendations made within the report acknowledge and address these issues. As such, we agree with and support all of the recommendations made by the ALRC.

However, we also note the limitations of the terms of reference and that the scope of the review is restricted to structural changes to the financial services laws. While the recommended changes would provide some simplification on the periphery, meaningful simplification would require wholesale policy reform from the Government. We welcome that the ALRC have suggested a number of these issues should be considered in detail by the Review of the Quality of Financial Advice. CPA Australia has made similar recommendations and look forward to seeing the final terms of reference for that review.

In response to the proposals and questions posed by the ALRC in the interim report, CPA Australia provides the following responses.

Ch 7. Definitions of 'Financial Product' and 'Financial Service'

CPA Australia supports all of the proposals made within Chapter 7. In particular, we strongly support Proposal A6 to include definitions and references to 'credit' in the Corporations Act and the ASIC Act.

At the time of the consumer credit reforms, CPA Australia strongly advocated against the introduction of the National Consumer Credit Protection Act 2009 as it unnecessarily largely duplicated the provisions of the AFS licence regime. Rather, the credit provisions should instead be incorporated into the Corporations Act.

We would strongly endorse the consolidation of the AFS licensing and credit licensing regimes as discussed in Chapter 8.

Ch 10. Exclusions, Exemptions and Notional Amendments

We support the proposals in Chapter 10 that the existing powers in the Corporations Act be removed or amended to provide for a sole power to create exclusions, grant exemptions and to thematically consolidate legislating instruments in the form of rules.

However, we do not support such power being granted to ASIC. We believe there should be separation between the 'rule makers' and the 'rule enforcers' and that there is proper parliamentary oversight when the law is amended. As such, we believe this power should sit with the Responsible Minister.

Ch 11. Definition of 'Financial Product Advice'

CPA Australia supports the proposals in Chapter 11 to remove references to 'financial product advice' and separate it into 'personal advice' and 'general advice'. However, we do not agree with the use of the term 'general advice'. The current use of the term refers to the provision of factual product information or sales material, which may imply that personal circumstances may have been considered and advice is being provided. As such, we would support the replacement of the term 'general advice' with a term such as 'financial product sales material' or 'financial product information and promotion'. We would also recommend consumer testing before finalising the terms to ensure such changes are meaningful to the end users being the consumer.

We also strongly support the ALRC propositions that further consideration be given to severing the connection between the regulation of financial advice and 'financial product' and the individual licensing of financial advisers. We believe these two reforms are the keystones to professionalising the financial advice sector and removing significant red tape and regulatory inefficiencies that act as barriers to consumers accessing affordable professional advice. We have called upon the Government to make these priorities within the Review of the Quality of Financial Advice.

Ch 12. Definitions of 'Retail Client' and 'Wholesale Client'

The delineation between retail and wholesale clients is flawed. Notwithstanding the current asset value and income thresholds are out of date and need to be indexed accordingly, the use of arbitrary thresholds to determine if an

investor is 'sophisticated' and thus do not need the full suite of consumer protections afforded to retail clients is ineffective.

Amending or removing the thresholds in isolation will not provide a subjective test. We believe a level of professional judgment is required of the adviser to determine if a client is financially 'sophisticated' or literate enough to understand the risks involved and be subject to a lesser level of protection.

We have asked the Government to consider, as part of the Review of the Quality of Financial Advice, the processes through which investors are designated as sophisticated investors and wholesale clients, if the delineation between the two is appropriate, whether the consent arrangements are working effectively, and what safeguards should be provided to wholesale investors.

If you have any queries regarding this submission, please contact Michael Davison, Senior Manager, Advocacy and Retirement Policy on [REDACTED]

Yours sincerely

[REDACTED]

Ms Keddie Waller
Head of Public Practice and SME
CPA Australia