

3 November 2014

Committee Secretary
Parliamentary Joint Committee on Corporations and Financial Services
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To the Committee

Inquiry into proposals to lift the professional, ethical and education standards in the financial services industry – Questions on notice

- 1. Identify those barriers, legislative or regulatory, which could be reduced to make it feasible for more individuals to hold a licence. If it is purely cost, which costs? Which ones do you think could be minimised without undermining the safeguards that we assume were the origins for those barriers in the first place?*

One of the key considerations in regards to the Australian Financial Services licensing framework is that it is structured around a single licensing regime, that is, one size fits all. As a consequence the associated obligations must be extensive to cover the range and varied services that may be provided by a licensee. Generally there is not the opportunity for the licensing application and associated obligations to be tailored to meet the specific service that a licensee may provide.

The professional accounting bodies found this when developing the limited licensing framework with government and the regulator. Its development had to be within the current existing framework, even though the services and advice to be provided is generally at strategic non-product level.

For many sole practitioners and small accounting practice that wish to retain their independence may be challenged by the associated financial costs and compliance costs associated with the current licensing framework.

An Australian Financial Services (AFS) licensee has a range of specific obligations:

- conduct and disclosure
- the provision of its financial services
- the competence, knowledge and skills of its responsible managers, as well as their good fame and character

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- the training and competence of its representatives and authorised representatives
- ensuring its representatives (including authorised representatives) comply with the financial services laws
- compliance, managing conflicts of interest and risk management, and.
- the adequacy of its financial, technological and human resources.

Where the AFS licensee provides financial product advice to retail clients, it must also:

- have in place dispute resolution processes, including membership of an ASIC approved EDR scheme, and
- compensation arrangements, primarily met through minimum professional indemnity insurance.

AFS licensees must also comply with any specific conditions on its licence and additional obligations under the Corporations Act 2001.

These obligations are necessary to ensure the provision of competent advice and ensure adequate consumer protection. However, they can be complex and costly to administer which increases with scale, nature and complexity of the advice and services provided by the AFS licensee and its representatives.

For this reason many financial advisers choose to operate as a representative or an authorised representative to avoid having to personally comply with many of these obligations and importantly, avoid any potential risks.

For example, a statement of advice should help a client understand, and decide whether to rely on the advice they have been provided. ASIC expects that the statement of advice is set out in a clear, concise and effective manner. The reality is a statement of advice has become an unnecessarily long compliance document that an AFS licensee and financial adviser use as part of their audit trail for protection from potential litigation. The flow on effect is the additional compliance measures to prepare the advice, which results in higher costs to provide the advice.

A similar issue occurred with product disclosure statements. Following consultation with an industry working group in 2012, the issue was addressed by the introduction of a mandatory Simplified Product Disclosure Statement regime for managed investment schemes and superannuation funds. While statements of advice vary given they are prepared for each client, one option may be to explore what efficiencies could be achieved through another such group.

Professional Indemnity Insurance

One of the key elements in regards to the high ongoing costs of being licensed is Professional Indemnity Insurance. It is well documented that the increasing cost of PII is an ongoing concern for the industry and barrier for some individuals to become licensed.

Again this is in some ways this may be a reflection of the single licensing framework. As a consequence

Regulatory Complexity and Overlap

Where a financial planner is operating a practice there is further complexity with the overlap of related advice regimes such as tax and financial planning advice and other related obligations, such as Anti-Money Laundering and Counter-Terrorism Financing Rules. Again when we consider professional accountants entering the financial advice space they may well have obligations as a registered Company auditor, SMSF auditor and /or register tax agent. From a regulatory perspective there must be an opportunity to address how all this regulation is interrelated so as to reduce any potential duplication of requirements.

It should be noted that even if the cost of compliance could be significantly reduced many individuals are still likely to choose to operate in an employee/employer adviser model for reasons including convenience and security.

2. *What sort of planning does your sector have in response to that failure to ensure people have professional indemnity insurance and what are the applications in the financial planning space?*

CPA Australia

CPA Australia members offering public accounting services, which includes financial planning services, are required to hold a Public Practice Certificate.

Every Member who holds a current Public Practice Certificate must hold a current enforceable policy of Professional Indemnity Insurance (PII) that satisfies at least the minimum requirements set out in CPA Australia's By-Laws. By-Law 9.8 outlines the minimum policy coverage, the specific requirements for coverage by an individual and an entity, and the terms of the coverage.

The minimum requirements, unless otherwise specified by the Board in any particular case, for a policy of professional indemnity insurance is \$2,000,000 for Australia based members covered by a Professional Standards Limited Liability Scheme (being all mainland Australia) or \$1,000,000 where a member is not covered (only Tasmania)

As part of the application process for new limited liability schemes, CPA Australia undertakes a review of the occupational work done by members, risks arising, impact assessment of persons who may be affected by limited liability and extensive review of claims data. The review includes independent actuarial assessments of claims data provided via member surveys and by our PII Scheme underwriters. A similar process is also undertaken by the Professional Standards Council prior to approval of a scheme and the applicable minimum professional indemnity insurance requirements.

CPA Australia By-Laws state that a member holding a CPA Public Practice Certificate must provide:

- an original certificate of currency of such policy of insurance or such other evidentiary document approved by the Board, within 10 Business Days of issue, renewal or replacement of such policy;
- notification of any cancellation, lapse or failure to renew such policy of insurance within 10 Business Days of that event; and
- an authorisation (remaining current as a continuing requirement) in such form as CPA Australia may from time to time require the relevant insurer to provide to any officer of CPA Australia information upon request relating to the identity of the assured, currency, sums insured and terms of such policy of insurance

CPA Australia has established processes to follow up members who fail to provide a copy of their certificate of currency within the specified timeframes. A member who fails to provide a certificate of currency will be referred to professional conduct and the following penalties may be imposed if the member is referred to a Disciplinary Tribunal:

- forfeiture of membership on such terms and conditions as to Readmission (or non-Readmission) as may be prescribed;
- a fine not exceeding the Maximum Fine;
- a severe reprimand;
- for such period and upon such terms as may be imposed: cancellation or suspension of any certificate, privilege, right or benefit issued or granted to the Member; and/or prohibition on the use of any designation permitted to be used by the Member;
- restriction for such period and upon such terms and conditions as may be imposed on the permission or ability of the Member or any Practice Entity with which the Member is Closely Associated, to trade under, display or utilise any Intellectual Property of the Company including any status or designation; or
- such other penalty as may be deemed appropriate in the circumstances.

It is important to note PETER RAYMOND HOLT is no longer a CPA Australia member and was not a member when ASIC made an adverse finding. A Professional Conduct case resulted in the forfeiture of his membership on 30 March 2012. Prior to the forfeiture of membership he held a CPA Public Practice Certificate and was covered by the CPA Australia Professional Standards Scheme.

Chartered Accountants Australian and New Zealand

All members of Chartered Accountants Australia and New Zealand who provide accounting services (as defined) to the public are required to meet a range of obligations and must have a Certificate of Public Practice (CPP).

Chartered Accountants Australia and New Zealand has a comprehensive compliance process in place to monitor its Certificate of Public Practice (CPP) holders' PI arrangements and to ensure they meet the the Chartered Accountants ANZ requirements.

Specifically all CPP holders must annual report they have current PI insurance. We obtain details of chartered accountants PI policies through an annual questionnaire. From the responses to the 2013 questionnaire, we confirmed that 99.3% of our members had a current PI policy which met the standards required by the Chartered Accountants Australia and New Zealand. Those members who were not compliant with our requirements either obtained a PI policy or had their CPP cancelled (broadly). Where a chartered accountant's CPP is cancelled they are unable to operate as, provide services as, or promote themselves as, a chartered accountant to the public.

Yours sincerely

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CPA Australia

Rob Ward
Head of Leadership and Advocacy
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About the signatories

CPA Australia and Chartered Accountants ANZ represent over 250,000 professional accountants in Australia. Our members work in diverse roles across public practice, commerce, industry, government and academia throughout Australia and internationally. Specifically members of the accounting profession are increasingly becoming involved more widely in financial services related advisory and service roles.