



21 October 2013

The Secretary
Senate Economics References Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600
Email: economics.sen@aph.gov.au

Dear Committee Secretary,

AFA Submission – Inquiry into the Performance of the Australian Securities and Investments Commission

The Association of Financial Advisers Limited (“**AFA**”) has been serving the financial advising industry for over 65 years. Our aim is to provide members with a robust united voice, continually improve practices and focus firmly on the exciting, dynamic future of the financial advising industry. The AFA also holds the client to be at the centre of the advice relationship and thus support policies that are good for consumers and their wealth outcomes.

With over six and a half decades of success behind us, the AFA’s ongoing relevance is due to our philosophy of being an association of advisers run by advisers. This means advisers set the agenda, decide which issues to tackle and shape the organisation’s strategic plan.

Thank you for the opportunity to provide feedback on the performance of the Australian Securities and Investments Commission (ASIC).

ASIC plays a very broad role in the regulation of a number of key parts of the Australian economy. As a professional association focussed on financial advisers, the AFA will limit our comments to ASIC’s role with respect to financial advice and financial advisers.

The AFA is aware of the issues that have contributed to the establishment of this Inquiry. We appreciate that this is related to significant issues with the quality of financial advice provided by a number of financial advisers and an apparent delay in a response from ASIC that involved the necessary scale and prioritisation. This is an important issue, as trust in the role of ASIC is central to consumer trust in the overall financial services industry. As set out in our response below, we do not believe that there are significant structural issues. We do however, believe that there are issues with the Australian communities’ understanding of the role of ASIC, that should be considered. It appears that the factors behind the issues that are the focus of this Inquiry are most likely to be operational in nature.

a) ASIC's enabling legislation and whether there are any barriers preventing ASIC from fulfilling its legislative responsibilities and obligations.

The powers of ASIC were reviewed as part of the 2009 Parliamentary Joint Committee on Corporations and Financial Services Inquiry into the Collapse of Storm. That review made recommendations with respect to the extension of these powers, which were implemented as part of the Future of Financial Advice legislation. We believe that these powers are sufficient for the oversight of the financial advice industry.

In recent years, ASIC has taken action against a number of financial advice licensees and financial advisers through the utilisation of Enforceable Undertakings and bannings. These enforceable undertakings have been taken out with respect to a number of large Australian financial advice businesses. This suggests that ASIC has the necessary powers to take action against Australian Financial Service Licensees, who in its view, have failed to comply with their obligations

We do not believe that ASIC requires any additional powers with respect to the oversight of the financial advice industry.

b) The accountability framework to which ASIC is subject, and whether this needs to be strengthened.

The Parliamentary Joint Committee on Corporations and Financial Services has responsibility for the oversight of ASIC, as set out in the ASIC Act. In the opinion of the AFA, this is an appropriate mechanism for oversight. ASIC have the carriage of some very complex and delicate issues, so there is a need for stringent oversight, but also some limitations on what might be made public prior to the conclusion of any inquiry.

ASIC is also subject to review by hearings at the Senate Economics Committee in the Budget Estimates Hearings. This can also be an effective mechanism for ASIC to be held accountable for their activity and actions.

ASIC is also subject to the directions of a Minister, subject to certain constraints. This is a further mechanism whereby the oversight can ensure that the focus of ASIC is appropriate.

In some cases the issue for ASIC may be more directly related to the level of resourcing with which to investigate matters that have been brought to their attention. The oversight process needs to ensure that ASIC is focussing on the key priorities and that they have the necessary resources to effectively pursue these matters in a timely manner.

Oversight of ASIC by the Australian Parliament is the most appropriate mechanism. We do not envisage the need for any significant change in this area.

c) The workings of ASIC's collaboration, and working relationships with other regulators and law enforcement bodies.

In the financial advice industry, ASIC is the key regulator. Other relevant regulators include APRA and Austrac. With the introduction of the Tax Agent Services Act (TASA), and the commencement of the obligations under TASA from 1 July 2013, there will be a new and important regulator in the Tax Practitioners Board (TPB).

In the view of the AFA, there does not appear to be a need for a high level of interdependency on financial advice matters with APRA and Austrac. With respect to the commencement of activity under TASA, we see a higher level of need for collaboration and a close working relationship

between ASIC and the TPB. This is most important in the area of education requirements and oversight. We would like to see this working relationship developed to a level where the application of legislation across the two regulators is delivered in a coordinated and aligned manner.

Collaboration and a close working relationship with law enforcement bodies is also very important. To some extent there is a sense within the financial advice industry that not enough advisers, who commit criminal activity, are subject to criminal actions as opposed to administrative actions. This only relates to a very small number of financial advisers, however it is important for the integrity of the industry that appropriate action is taken. We are not close enough to understand the issues in this area, however we would like to have greater confidence that a financial adviser who commits fraud or is systematically providing inappropriate advice, will be necessarily subject to appropriate proceedings in a timely manner.

d) ASIC's complaints management policies and practices.

From our exposure to retail consumers, it is clear that only a limited proportion of consumers understand the existence of ASIC and appreciate their role. The Australian financial services industry is structured around an initial complaints handling arrangement within the licensee and a separate and independent external dispute resolution service. ASIC is an alternative destination for complaints, rather than the primary destination.

ASIC are clear in their literature that "Generally we do not act for individuals and we will seek to take action only on those reports of misconduct where our action will result in a greater impact in the market and benefit the general public more broadly".

In the context of the legislated complaints management mechanisms, it is understandable that ASIC do not position themselves as a primary complaints service. In this positioning they are setting out a role that they are looking for systemic issues where regulatory action will have a broader impact. The AFA is supportive of this positioning, however the issue is the speed with which they identify systemic issues and the nature of the response. We recognise the complications in identifying systemic issues, when they are a secondary point of contact for consumer complaints and also likely to be advised after other complaint channels have proven unsuccessful for the complainant.

Complaints are one source of information for a regulator, but not the only source. If ASIC devoted significant resources to the management of complaints, then we would expect that there would be less funding available for other oversight activities. This would be counter productive. Complaints with respect to fraud or unlicensed operators should be directed to ASIC, as these are very serious issues and ASIC are the party that can most effectively respond to matters of this nature.

With respect to complaints, we would like to see a dedicated complaints channel made available to industry stakeholders and existing financial advisers. Complaints from another financial adviser are typically qualified information. We would expect that this feedback would be focussed upon significant issues and systemic misbehaviour and would therefore be appropriate for ASIC to prioritise for timely investigation. A direct complaints channel for financial advisers that included quick response times would be a valuable enhancement to the existing complaints management mechanisms.

e) The protections afforded by ASIC to corporate and private whistleblowers.

We recognise the importance of whistleblower protection and support the continuation of this and expansion where practical. The protections available to people involved with corporations are particularly important as this enables staff who identify problems with one employee to communicate with the regulator in a protected manner. In order to leverage the protection, the individual needs to

be identified. This seems sensible. Someone who has made an anonymous complaint is less likely to need any form of protection. We suspect that the role of whistleblowers needs to be more clearly communicated.

It is important to the industry and consumers that ASIC receive a steady flow of relevant and meaningful information that they can readily be acted upon. The complication is that ASIC most likely receives a huge volume of disparate data that is more complex to compile and analyse. If ASIC was to become the primary destination for all forms of complaints then this would only make this task even more complex.

The AFA would certainly support activity to enhance the flow of information to ASIC, that better enabled them to respond to significant issues in a more timely manner.

f) Any related matters

We are very much aware of the recent heavy policy workload that has resulted from legislative changes such as the Future of Financial Advice and Stronger Superannuation legislation. Significant regulatory change causes substantial workload within ASIC to provide guidance to the industry in the implementation of these changes. The higher the focus upon regulatory change, the less time and resources are available to undertake industry oversight and surveillance. We suspect that in recent years the increased policy/regulatory workload may have had some impact upon the ability to undertake supervision.

We note the surveys that ASIC has in recent years undertaken on the larger licensees in the financial advice market place. We recognise the intent of this activity, in that it provides useful information to identify areas where increased oversight is required.

Conclusion

We thank you for the opportunity to provide feedback on the performance of ASIC. The role played by ASIC in the financial services industry is critical. Their role is to maintain the integrity of the entire financial services system. Recent cases where major issues appear not to have been responded to with the level of emphasis and timeliness that is required, highlight the complexity of the role of ASIC and the need for improved analysis and assessment of issues. This review will hopefully assist in identifying opportunities for improvement.

Should you have any questions, please do not hesitate to contact me

Yours sincerely,

Brad Fox

Chief Executive Officer