Calls mount for combined FDS and OSA

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If policy-makers legislate annual opt-ins for Ongoing Service Agreements they should mitigate the extra work for advisers by folding Financial Disclosure Statements into a combined document, says Xplore Wealth chief executive Michael Wright.

In a submission to ASIC Wright argues that while he agrees with the move from biennial to annual OSAs the proposal should be considered in conjunction with one of the Hayne royal commission's central themes; to make regulation simpler and more efficient.

Forcing advisers to produce a backwards-looking FDS every year as well as a forward-looking OSA amounts to double-handling, Wright believes, and goes against the spirit of Hayne's final report.

"We encourage ASIC's approach to consider a combined backward looking FDS and forward-looking renewal notice to be combined into one ongoing fee arrangement document," he states.

ASIC do hint at the option of a combined document in Consultation Paper 329, which deals specifically with the advice fee consent and the independence disclosure proposals slated to begin on July 1 this year.

"Fee recipients may seek a client's consent for deducting ongoing fees in the same document as the renewal notice, assuming that the requirements in the draft instrument are met. Alternatively, a fee recipient may seek a client's written consent in a separate consent form," ASIC states.

This is good as a discussion point, Wright ventures, but would be better in legislation.

"It is not clear that ASIC's draft instrument sufficiently allows for the combination of these obligations into one document," the Xplore submission states.

The relevance of FDS's once annual opt-ins are in place was also called into question by the Association of Financial Advisers' head of policy, Phil Anderson, at an AFA industry day in February.
Anderson took an even harder line, calling the FDS process "fundamentally flawed", and arguing there was "no great consumer benefit" in the document.

Fine-tuning regulatory overlap

Wright joined Xplore Wealth in August 2019 after leaving his previous post as head of advice at Westpac's BT. Xplore provides a gamut of financial services including an investment platform, oversight of a superannuation fund and the provision of managed discretionary account services.

He says the move to annual opt-ins will "dramatically" increase the volume of renewals required to be completed each year as well as the associated costs. This will be compounded by the removal of the current exemption for pre-FoFA clients from renewal notice obligation.

And while Wright advocates for these developments, he believes they will place further strain on a compliance checklist that advisers are already struggling to accommodate.

"The Industry will need support to find new, efficient, compliant and cost-effective approaches," Wright states, adding that the industry must be supported by legislators and regulators in "removing duplication and unnecessary requirements".

Speaking to *Professional Planner*, Wright says the submission was an opportunity to get the "broader settings" on fee consent and disclosure right, and to "fine-tune areas of regulatory overlap".

"With the volume of renewals across the advice industry likely to dramatically increase new, efficient, compliant and cost-effective approaches will be needed," Wright adds.

The Fold Legal solicitor Simon Carrodus, who was consulted on the submission, says the double handling issue is key for advisers.

"Everybody accepts we're going to annual renewal, which is a great thing for clients and should eliminate fees for no service," Carrodus says. "We can do that but it doesn't need to be as complicated as it is."

After ASIC released the consultation paper on March 10 submissions were open until April 7. While the legislative instruments are due to me made on July 1, this is highly unlikely as parliament is not due to sit until August so legislation cannot be passed before then.

At the recent Conexus Financial digital retirement conference, the assistant minister for superannuation, financial services and financial technology, Jane Hume, would not be drawn on issues around the timing of the legislation.