



FINANCIAL PLANNING
ASSOCIATION *of* AUSTRALIA

30 May 2017

Mr Ryan Walsh
The Treasury
Langton Crescent
Parkes ACT 2600

Email: ASICfunding@treasury.gov.au

Dear Mr Walsh

Re. Industry funding model for ASIC

The Financial Planning Association of Australia (FPA) welcomes the opportunity to provide feedback on the Exposure Draft ASIC Supervisory Cost Recovery Levy Regulations 2017.

Our submission focuses on the elements of the funding model related to the financial advice sector.

The Government commenced its consultation on the ASIC funding model in August 2015 which proposed a flat rate plus variable component for providers of personal financial advice.

Due to the feedback received during what was a robust consultation process, this approach was amended in late 2016 to a flat rate component per adviser. We question why Treasury has now changed from the position presented in late 2016 to revert back to the 2015 style of model reintroducing a fixed levy plus graduated levy, at the eleventh hour and counter to earlier consultation feedback.

We are very concerned about the inequity of the funding model proposed in the draft Regulations and the impact it will have on market competition in the financial advice sector.

The FPA would welcome the opportunity to discuss with you the issues raised in our submission.

If you have any questions, please contact me directly on heather.mcevoy@fpa.com.au or 02 9220 4500.

Yours sincerely

Heather McEvoy

Policy Manager

Financial Planning Association of Australia¹

¹ The Financial Planning Association (FPA) has more than 12,000 members and affiliates of whom 10,000 are practising financial planners and 5,600 CFP professionals. The FPA has taken a leadership role in the financial planning profession in Australia and globally:

- Our first “policy pillar” is to act in the public interest at all times.
- In 2009 we announced a remuneration policy banning all commissions and conflicted remuneration on investments and super for our members – years ahead of FOFA.
- An independent conduct review panel, Chaired by Mark Vincent, deals with investigations and complaints against our members for breaches of our professional rules.
- The first financial planning professional body in the world to have a full suite of professional regulations incorporating a set of ethical principles, practice standards and professional conduct rules required of professional financial planning practices. This is being exported to 24 member countries and 150,000 CFP practitioners of the FPSB.
- We have built a curriculum with 17 Australian Universities for degrees in financial planning. Since 1st July 2013 all new members of the FPA have been required to hold, as a minimum, an approved undergraduate degree.
- CFP certification is the pre-eminent certification in financial planning globally. The educational requirements and standards to attain CFP standing are equal to other professional designations, eg CPA Australia.
- We are recognised as a professional body by the Tax Practitioners Board



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ASIC SUPERVISORY COST RECOVERY LEVY REGULATIONS 2017

Exposure Draft

**FPA submission to
Treasury**

30 May 2017



Introduction

The Regulator plays a fundamental role in ensuring the confidence and protection of consumers which is paramount to the effective and sustainable operation of Australia's financial service sector.

The FPA provides comments in relation to licensees who provide personal financial advice.

Due process

The FPA wishes to express concern that the model proposed in the draft Regulations introduces new elements and reintroduces levies Treasury had previously consulted on and since removed citing stakeholder feedback. This has created a situation where the consultation process is starting all over again, just weeks out from commencement of the regime.

Specifically, Treasury has done a backflip on the proposed levy for personal financial advice providers presented in late 2016, reverting back to the 2015 style of model of a fixed levy component plus a graduated levy component. This change has been made at the eleventh hour and counter to earlier consultation feedback from many stakeholders of the significant and inequitably larger burden this will create for small licensee and sole practitioners businesses.

Stakeholder concern regarding this approach was duly noted in the ASIC 2016 Supporting Attachment to the Government's Proposals Paper:

The August 2015 consultation paper proposed a levy on financial advice providers on Tier 1 products that involved a fixed component of \$1,350 and a variable component of \$470 per adviser. Submissions strongly opposed this model due to concerns it would place a larger burden on smaller licensees relative to larger licensees due to the fixed component. This concern has been addressed by moving to a fully variable levy. (para 241, pg 65)

Reintroducing a fixed minimum levy component to apply to all licensees at the same rate, as per the 2015 proposed model, causes the total amount of the levy to be lower per adviser for large licensees than small licensees. We also note that despite ASIC's statement above, the proposed fixed levy has also been further increased, as has the per adviser variable component proposed in this model. This further exacerbates the concerns expressed in the 2015 model.

We suggest that given the significance of this change, it would have been appropriate for Treasury to engage with stakeholders during the drafting of the Regulations.

Recommendation

We seek clarification for the reason for this change, and for the lack of consultation regarding this new model given it was such a drastic back flip to the agreed problems of the 2015 proposal.



Section 41 - Licensees that provide personal advice on relevant financial products to retail clients

The levy to be established under the draft Regulations for the tier 1 personal financial advice sub-sector includes two components:

Minimum levy component (\$1,500) + graduated levy component

Formula for graduated levy component:

$$[\text{ASIC's sub-sector regulatory costs} - (\text{minimum levy} \times \text{no of licensees})] \times (\text{No of advisers of licensee} / \text{total no of advisers on FAR})$$

It is understood that ASIC's surveillance and enforcement costs are to be recovered under the graduated levy component.

The draft Explanatory Memorandum (EM) states that the fixed minimum levy component covers the regulatory costs for stakeholder engagement, policy advice, guidance, education and a portion of ASIC's capital allowance. It is proposed that this fixed levy component is applied equally to all licensees as ASIC holds that view that all participants have access to the output of these activities and the costs are therefore a standard expense of doing business as a licensee, regardless of the size of business.

These costs are an expense of doing business however given the increasing number of regulatory obligations targeting advisers and the transparency of adviser performance², the benefits of this regulatory activity apply to the industry as a whole and at the adviser level, not just for licensees. Further, regulations serve to protect consumers, and consumers interact with advisers not licensees, Therefore it is appropriate to average such costs based on a per adviser levy.

Licensee usage of these activities also varies significantly depending on the size, scale and complexity of the business. With the exception of the formal Regulatory Guides, it is the large licensees who leverage such Regulator outputs. Small licensees rely more on peer forums, consultants and professional bodies, with small licensee feedback indicating ASIC rarely engages with them. Larger licensees have more incidences that give rise to the need for policy guidance or ASIC advice and may have special requirements even at the abstract policy level as they have more complex systems that raise unique policy issues. The Regulator naturally focuses its efforts on assisting larger licensees as such entities represent such a large percentage of the total financial adviser market.

We stand by our concerns stated in 2015 regarding this approach - a fixed levy component in the tier 1 personal financial advice model creates an inequitable and disproportionate impact on small licensees who end up paying significantly more per adviser in the total levy, than large licensees.

² Through the ASIC Financial Adviser Registry; the new professional and education standards for advisers; best interest duty obligations on the adviser; improved reference checking; individual registration with the Tax Practitioners Board; and other recent measures.



It is the minimum levy component of \$1,500 that significantly and unfairly distorts the cost of the levy to disadvantage small entities. The following calculations³ serve to illustrate this issue.

	Sole practitioner	Small licensees (5 advisers)	Medium licensee (50 advisers)	Large licensee (250 advisers)
Minimum levy component	\$1,500	\$1,500	\$1,500	\$1,500
Graduated levy	\$819	\$4,098	\$40,989	\$204,945
Total levy	\$2,319	\$5,598	\$42,489	\$206,445
Levy per adviser	\$2,319	\$1,119	\$849	\$825

In addition to the impacts detailed in Attachment 1, an inequitable levy will significantly discourage competition in the financial advice market and only serve to reinforce the status quo. This, at a time when the benefits of competition must be encouraged to help drive improvements in the quality of financial advice for consumers.

Market competition is needed to challenge the status quo and drive the cultural change the Government, ASIC and consumers are calling for. As stated by ASIC Chairman, Greg Medcraft:

“Culture is one of the major root causes of misconduct”⁴

The imposition of a funding model that discourages competition also runs counter to Government’s commitment in the 2017-18 Budget to provide \$300 million over two years to establish a National Partnership on Regulatory Reform (NPRR) with the States and Territories to remove regulatory restrictions on small businesses and competition⁵.

The Government has also recently called on the Productivity Commission to review competition in Australia’s financial system (see Attachment 2 for the Inquiry Terms of Reference), as recommended by the Financial Systems Inquiry. The 2014 FSI considered that the high concentration and degree of vertical integration in some parts of the Australian financial system has the potential to limit the benefits of competition in the future.

The process of financial advice includes the client service of implementing recommendations to help clients achieve their goals. Therefore in terms of the insurance distributor levy, our interpretation is that licensees will not only incur this personal financial advice levy, but under the draft Regulations will also bear the cost of the insurance distributor. We seek clarity as to whether they will also incur the securities dealer and margin lending levies. Small businesses are currently paying for ASIC’s regulatory costs via company taxes; now they will also potentially pay for multiple levies on top of all the other licensee expenses.

The total levy will create a significantly larger burden for small licensee businesses that have the least capacity to absorb such high additional costs. Though there will also be impacts on larger financial advice licensee businesses, they have greater scope to manage such levies through the economies of

³ These calculations are based on forecast figures provided in the 2016 ASIC Supporting Attachment paper. Total cost recovery for sub-sector = \$22,080,000; Fixed component costs = \$4,508,000; Number of licensees = 2,150; Total advisers = 23,000

⁴ Speech by Greg Medcraft, Chairman, Australian Securities and Investments Commission at the AHRI Senior HR Leaders Forum Luncheon (Sydney, Australia), 5 April 2017

⁵ Budget Measures 2017-2018, Budget Paper No. 2, May 2017, pg. 168



scale of their business operations, for example, they can distribute the fixed cost levies across a greater number of advisers under their licence.

There is also a concern that financial planner licensees will be further impacted by the potential 'pass through' of levies by other reporting entities in the financial advice value chain via business-to-business fees. For example, stockbrokers, credit rating agencies, etc will likely increase the subscription and brokerage fees they charge advisers. This puts licensees at risk of paying for the same regulatory activity twice – potentially once via the direct ASIC levy, then again via the pass through of other market participant levies. These costs will ultimately be paid by consumers. This means both licensees and consumers will end up double paying for this levy.

Combined with all other regulatory costs (outside of this model), the ASIC funding model will change the financial advice market: Fees charged to consumers will go up, adviser numbers will be cut, and many sole traders, small licensees and medium licensees will be forced to move to a general advice only model or turn in their license altogether and join a large licensee. This will be to the detriment of consumers.

ASIC's resources mean that it is easier for the Regulator to deal with one large licensee than 500 small licensees. However, discouraging competition has detrimental effects on consumers. In a competitive market no single provider, or group of providers, can dictate or insert heavy influence over how the market operates. Competition enhances innovation, choice, efficiency and quality of services for consumers.

Competing firms have incentives to produce new and better products and services for their customers. Competing firms offer customers choices among firms and among products and services. Competing firms strive to operate more efficiently in order to attract more customers with lower prices.⁶

The Government needs to decide whether it wants to encourage competition in the financial advice sector, or discourage it and be left with the status quo (or even significant further consolidation). It is in the best interests of consumers for the financial advice profession to be effectively regulated, but also for there to be effective competition in the market; the funding model must reflect this consumer best interest principle.

Based on the ASIC costs released in 2016, the fixed levy component makes up approximately 20% of the overall funds to be recouped under the model in the draft Regulations. These funds can be adequately and fairly recovered from all entities via a fully variable component, as proposed by ASIC in 2016. Establishing a levy compiled of multiple components also increases the complexity of the model.

This is not a debate about supporting small business over large business. This is a principal of fairness and encouraging a competitive financial advice market to drive beneficial improvements for consumers.

⁶ James A. Wilcox, Professor of Financial institutions, University of California, Berkeley: The Increasing Integration and Competition of Financial Institutions and of Financial Regulation, Published in Research in Finance, Elsevier Press, Volume 22, pp. 215-238, 2005.



We question whether the benefits of carving out a relatively small percentage of ASIC's costs to be collected via a fixed levy component outweigh the significant impact it will have on competition in the financial advice market and the unnecessary complexity it adds to the model, and whether this is in the best interests of consumers.

Recommendation

Apply the flat rate levy component (in section 9) to section 41 Licensees that provide personal advice on relevant financial products to retail clients, where the sub-sector population equals the draft entity metric:

The **flat rate levy component** for the sub-sector for a financial year is the amount worked out using the formula:

Sub-sector regulatory costs

Sub-sector population

where:

sub-sector population means the number of relevant providers (within the meaning of section 910A of the *Corporations Act 2001*) that:

- (a) are registered on the Register of Relevant Providers (within the meaning of section 910A of that Act) at the end of the financial year; and
- (b) are authorised to provide personal advice to retail clients on behalf of the entity; and
- (c) if the entity that authorised the relevant provider forms part of the cash equities participants sub-sector (see section 60), the futures participants sub-sector (see section 62) or the securities dealer sub-sector (see section 65)—provide personal advice to retail clients other than the following kinds of advice:
 - (i) advice on financial products that are admitted to quotation;
 - (ii) advice on financial products that are traded on a prescribed foreign financial market (within the meaning of subregulation 7.7A.12D(2) of the *Corporations Regulations 2001*);
 - (iii) advice on basic banking products.

Enforcement Special Accounts (ESA) and enforcement activity

The 2016 ASIC Supporting Attachment paper indicated that the annual costs of ESA projects of \$27million will be recovered through the levy on publicly listed, disclosing companies (pg 22). This included the cost of the ASIC's Wealth Management Project which is focusing on the conduct of the largest financial advice firms, including the advice arms of AMP, ANZ, CBA, NAB and Westpac groups⁷, which was established in October 2014.

⁷ Media release: 16-365MR ASIC releases report on the charging of advice fees without providing advice by major financial institution, ASIC, Thursday 27 October 2016



The draft EM states:

The graduated (variable) component of the levy for subsectors will recover ASIC's remaining costs (that is, the costs of ASIC's surveillance and enforcement (including enforcement funded by the Enforcement Special Account) activities) to regulate the subsector. These costs will be apportioned using the total reported industry metric above the minimum threshold for the subsector...(pg 1)

This implies that the costs of the Wealth Management Project will be recouped from all entities in the *Licencees that provide personal advice on relevant financial products to retail clients* sub-sector, rather than from the large licencees subject to this extensive and expensive regulatory activity only.

Not only will the levy charge small licencees more per adviser than large licencees based purely on the scale of their business, all licencees will have to cover the cost of this extensive ASIC regulatory project which focuses solely on the conduct of specific large players. This will significantly exacerbate the impact of the inequitable levy on small and single-adviser licencees.

As recommended in our submission in response to the 2016 consultation, given the Wealth Management Program (WMP) investigates financial advice activity of very specific financial advice firms only, its costs should be recovered through the appropriate Corporate Sector levy or directly from the entities involved, possibly through a special WMP levy.

Similarly, there should be some control mechanism over ASIC's costs particularly in relation to surveillance and enforcement activity of individual firms or a small group of 'like' entities, to ensure ASIC's costs do not blow out over budget. There must be parameters included in the model for such regulatory activity to hold the individual entity or group of entities liable, rather than the rest of the industry covering such costs.

Recommendation:

The regulatory costs of the Wealth Management Project (WMP) should NOT be recovered via the tier 1 personal financial advice levy.

WMP regulatory costs should be recovered via the appropriate Corporate Sector levy or directly from the entities involved, possibly through a special WMP levy imposed on those entities.

The model should include control mechanism to ensure an individual entity or a group of 'like' entities are held liable for excessive surveillance and enforcement costs that are directly attributed to their misconduct.

Costs for very specific and substantial surveillance and enforcement activity that targets a specific group of entities should be recovered through a special project levy applied only to those entities.



ASIC accountability

We are concerned that the ASIC accountability measures have not been released or even referred to in this consultation process, particularly given the model is due to commence in five weeks.

The legislation currently before Parliament include Division 4 – Transparency, of the exposure draft ASIC Supervisory Cost Recovery Levy (Consequential Amendments) Bill 2017 which imposes obligations on ASIC to produce an annual dashboard report about its regulatory costs only.

However, this funding model was clearly linked to the FSI recommendation to “*improve ASIC’s transparency and accountability to industry*” (1.6). It is extremely concerning that ASIC accountability measures have not been forthcoming. These measures should have undergone consultation and finalised prior to the commencement of the funding model.

There is also a need to ensure due process continues around the setting of ASIC’s overall budget via the Government’s Federal Budget process, to control costs and ensure regulatory efficiency and saving opportunities are maximised.

Recommendation

The Government clarify and inform all stakeholders of the timing of the release of the draft ASIC accountability measures which form part of this funding model.

Cost allocation and double payment

It is unclear how ASIC allocates its costs within the model. If, for example, ASIC undertakes surveillance activity specifically on personal advice proved by stock brokers, would this be allocated to the personal advice sub-sector or the securities dealers sub-sector?

It is likely that entities may be captured in more than one entity sub-sector. We would like to ensure entities do not end up double paying for the cost of the same piece of regulatory activity. For example, regulatory activity such as a surveillance project, is conducted based on the type of business service the company provides clients. From a licensing and cost allocation perspective this activity may span into 2 sub-sectors. If the entity is a member of both sub-sectors, they will incur the cost of the one regulatory activity twice via the levies they are charged for each sub sector.

Based on the definitions in the draft Regulations, financial planners and other service providers may be caught under multiple sub-sector definitions potentially for the same Regulatory activity, meaning they may pay twice (or more) for the same activity.

If a financial planning licensee also held a securities dealer authorisation to allow them to implement recommendations of a financial plan for their client, in the above example this would result in the licensee paying for the one piece of regulatory activity both under the financial advice levy and the securities dealer levy.

While regulatory efficiencies are strongly encouraged, care must be taken to ensure entities are not paying twice for the same regulatory output.



The 2016 Supporting Attachment indicated that ASIC was introducing a new regulatory transformation project to deliver an integrated data platform to standardise workflows (pg. 11); and that ASIC's new Financial Management Information System (FMIS) time records regulatory activities to verify ASIC's actual expenditure for regulating each subsector (pg. 12).

Section 138 of the ASIC Supervisory Cost Recovery Levy (Consequential Amendments) Bill 2017 currently before parliament requires ASIC to publish an annual dashboard report of its regulatory costs for each subsector.

The industry funding model imposes significant additional costs on businesses. There must be transparent measures in place to control such costs and ensure they are appropriately allocated. Oversight and very detailed reporting of ASIC regulatory costs within each sub-section must be required with the measures used to collect relevant data for cost allocation purposes regularly reviewed for accuracy and efficiency. Cross-subsidisation to preserve overall Federal Budget allocations must not be permitted.

The Australian Government has implemented an annual \$1 billion red tape reduction target to which agencies such as ASIC are required to contribute if regulatory action by the agency results in a cost reduction to businesses. Any identified savings should be used by ASIC to 'offset' regulatory action which may impose regulatory costs. ASIC's contribution to the Government's red tape reduction target should be clearly and transparently published, in the funding model annual dashboard, ASIC's annual report, and as part of the Regulator's accountability measures.

The efficiency, accuracy and appropriate workings of ASIC's data collection for the purposes of regulatory cost allocation and recovery, and the overall operation of the funding model should be regularly reported on and reviewed through the Parliamentary Joint Committee on Corporations and Financial Services (PJC) oversight of ASIC.

Recommendation

There must be clear delineation of costs attributed to sub-sectors and checks in place to ensure double charging is avoided.

Oversight and very detailed reporting of ASIC regulatory costs within each sub-section should be required

The PJC's oversight of ASIC should include regular reports on and reviews of the appropriateness of the operation and cost allocation of the ASIC funding model.

ASIC licensing education, guidance and process

An objective of the Industry funding model for ASIC is to encourage entities to hold only the license authorisations they require to operate their business and provide their services to consumers. The purported aim of this objective is to reduce any unnecessary ASIC resources being allocated to regulate sectors where there are large numbers of entities holding authorisations they do not use or require.



Recommendation

Consideration should be given to how ASIC can assist licensees in ensuring they understand which license authorisations are required for their specific business activity.

For example, are financial advice licensees required to hold a margin lending authorisation to “advise” and/or to “deal” just to be able to inform clients that they do not recommend margin loans?

Section 68 - Insurance product distributors.

The criteria for the insurance product distributor sub-sector includes entities that hold an AFSL and are authorised to “deal in general insurance and life risk insurance products”.

Financial planners are commonly authorised under their licence to carry on a financial services business to “deal in a financial product” including life insurance products.

This is the legal structure of an authorisation to provide and implement personal financial advice on life insurance matters. However, the primary purpose of this authorisation is to provide and implement personal advice. This creates an unfair double payment requirement.

Financial planners do not ‘distribute’ insurance products, provide brokerage service, and never act as an ‘agent’ of the insurer to sell their products. Financial planners provide personal financial advice including assisting clients with insurance claims.

Further, this levy should not combine the sub-sectors of general insurance (a tier 2 product) and life insurance (a tier 1 product) as this will unfairly increase the levy.

Recommendation

The Regulations should explicitly state that the insurance distributor levy does not apply to licensees who provide personal or general financial advice on general insurance products or life risk insurance products.

Such entities should be excluded from the Section 68 definition of life insurance distributor.

Section 65 – Securities dealer

The Criteria for a securities dealer is:

- (1) A leviable entity forms part of the **securities dealers** sub-sector in a financial year if:
- (a) the entity holds an Australian financial services licence that authorises the holder to deal in securities; and
 - (b) the entity is not a participant in a clearing and settlement facility or a financial market; and
 - (c) more than \$250,000 in transactions for the entity have been executed on, or reported to, a large equity market in the financial year.

It is unclear whether financial planners would be captured under this levy. Generally, financial planners may implement client recommendations via a stock broker. However, this requires the licensee to hold an authorisation to “deal in securities”.



The purpose of the sub-sector definitions should be to capture those entities whose primary business falls within the category. The securities dealers sub-sector should capture those entities who conduct a large amount of transactions. Stock brokers can conduct upwards of \$100 million in transactions per year. Setting the transactions threshold too lower risks capturing others into paying for the regulatory costs of regulatory activity that they themselves are not party to or derive no benefit from.

For example, an ASIC surveillance activity on stock broker conduct will target businesses that provide stock broking services to consumers. If financial planners are captured under this definition, it is likely that such regulatory activity will require financial planners to pay an equal share of the cost of this activity that specifically targets stock broking businesses.

This levy also applies at both the ASX participant level and at the licensee level on the same transactions. The ASX participant will increase their brokerage charges to cover the impost of the ASIC fees, which will ultimately be paid by the client and/or the licensee that uses the market participant services. The licensee pays a levy on the same transactions and also recovers cost from the client. This means both licensees and consumers will end up double paying for this levy.

Recommendation

The FPA seeks clarification regarding the application of section 65 – Securities dealers, to licensees who provide personal advice on relevant financial products to retail clients.

Section 38 - Licensees that provide general advice only to retail or wholesale clients

The flat rate method (regulatory cost / sub-sector population) applies to entities who meet the definition of this sub-sector. Based on the 2016 Supporting Attachment figures, this is estimated at:

$$\$800,000 / 898 = \$890$$

The disparity in the charging model for general advice and personal advice incentivises general advice which may be detrimental for consumers.

There is a high level of confusion in the market, within industry, media, Government and consumers about the definitions and roles of financial advisers and financial planners, and those that sell financial products, as can be seen in recent ASIC legal actions on this issue.

Framing 'general advice' as advice plays into the behavioural aspects of financial decision-making by giving the impression that the advice has a reasonable basis or is appropriate for the client, and thereby exposes retail investors to decisions made under uncertainty about the regulatory framework for that advice. Anecdotal evidence shows that it is common for individuals to interpret general advice as personal advice because it is relevant to their circumstances at the time it is provided.

The FPA is also regularly notified of entities giving personal advice under the guise of general advice. Providers in the general advice only sub-sector have carve outs from many of the conflicted remuneration and best interest obligations set under the FoFA reforms. This puts consumers at greater risk.

The Government has committed to change the definition of general advice. This funding model should be reviewed following such changes.



Incentivising the provision of general advice based on the current lapse definition, over personal advice, through a more affordable levy will exacerbate this issue as general advice may be provided to avoid higher levies.

Recommendation

The levy for licensees that provide general advice only be commensurate with the levy for licensees that provide tier 1 personal advice.

Section 40 – Licensees that provide personal advice to retail clients only on products that are not relevant financial products

It is proposed that the flat rate method applies to licensees who provide personal advice only on tier 2 products. Based on figures provided in 2016:

$$\$900,000 / 614 = \$1,465$$

While it is accepted that tier 1 product advice is generally more complex than tier 2 product advice, we are concerned that entities in this sub-sector currently have exemptions on conflict remuneration requirements and other FoFA measures. While this potentially reduces ASIC's regulatory activity in this sub-sector, it also increases the risk to consumers.

Recommendation

The levy applied to licensees who provide personal advice to retail clients only on products that are not relevant financial products, be reviewed should current exemptions in the law be amended.

Robo advice

As with all providers of financial advice, providers of digital financial advice (robo advice) may be required to hold an AFSL for either the provision of general advice only, or personal financial advice.

As there is no specific sub-sector for robo advisers, it is assumed such entities would therefore fall into the relevant advice sub-sector based on the entity's license authorisations and incur the relevant levy.

Robo advice is technology based and therefore groups consumers based on sample circumstances and provides all consumers in the group with the same advice. This significantly increases the risk of the consumer receiving financial advice that may not be appropriate for their needs and circumstances.



While robo-advice can serve a purpose, it presents an inherently increased risk of inappropriate advice for consumers and therefore should be captured in an appropriate sub-sector within the model. While we note there are few if any robo advisers generating revenue, they also require certainty around future ongoing costs.

Recommendation

Robo advisers be included in the tier 1 personal advice sub-sector.

Review of the funding model

The Government has committed to a number of changes to provisions in the law and regulations applying to general and personal financial advice. Such changes may significantly impact the type and level of regulatory activity required by ASIC to oversee the new obligations and ongoing in the relevant sub-sectors. For example:

- restricting in the law the use of the terms financial planner and financial
- changing the definition of general advice

It is important that the relevance, appropriateness and accuracy of the funding model and ASIC's data collection and cost allocation methodologies, keep pace with the changes in regulations.

The Government's Regulatory Burden Measure (RBM) should be used as a basis for calculating any cost saving or additional expenditure.

Recommendation

The funding model should be reviewed, with appropriate stakeholder consultation, at the time of the regulatory change and outside of ASIC's annual funding model review process.

Explanatory Memorandum: Sections 12 to 15 – corporate sub-sectors with a flat rate of levy

Small proprietary company levy

The 2016 ASIC paper proposed a flat \$5 levy apply to small proprietary companies. It is understood via discussions with Treasury that this levy will still apply. But rather than be collected as a direct and separate levy, it is proposed to increase the annual fee for proprietary companies by \$5 in the Corporations (Fees) Regulations 2001. This approach has been proposed to reduce the extra costs of administering the additional \$5 levy for both ASIC and small proprietary companies.

The FPA supports this approach. However, the wording of the draft Regulations and EM does not specifically refer to the inclusion of the \$5 levy for small proprietary companies in the model. Rather, it can be easily misinterpreted that the proposed \$5 small business levy has been dropped.



Should there be an increase in the annual fee for proprietary companies by \$5 for this purpose, it would be appropriate for it to be attributed to the ASIC funding model levy. This would work within the objectives of the Industry funding model to transparency of ASIC funding.

Recommendation:

It should be transparently and clearly disclosed in the EM that the ASIC Industry funding model includes a \$5 levy for small proprietary companies, to be collected via an equivalent increase in the annual fee for proprietary companies in the Corporations (Fees) Regulations 2001.

Proprietary company definitions

The draft Regulations and EM refer to small proprietary companies and large proprietary companies however there is no definition provided.

It is suggested that the inclusion of such definitions would assist entities in identifying the appropriate levies that would apply to their business.

Recommendation

Include definitions of small proprietary company and large proprietary company in the Regulations.

Section 8 – Pro-rata levy components

The draft Regulations and EM state that “A provision to pro-rate the levy component for some of the sub-sectors will be drafted after consultation is completed”.

Recommendation

The Regulations should fairly permit all sub-sectors to pro-rata the levy component based on the duration of the financial year that the entity was a member of that subsector.



Attachment 1: Impacts on inequitable funding model

a) Barrier to entry

The additional costs will be a barrier to entry for small licensee businesses and single-adviser licensees, and financial advisers will be more likely to remain with large financial institutions.

The disproportionate cost the proposed funding model would impose on small licensee businesses will restrict trade and negatively impact on the ability for them to compete in the advice market. 2015 FPA survey respondents indicated that:

- 46% would cost the levy directly into the fees charged to clients
- 29% would not be able to employ new people
- 20% would potentially reduce staff numbers
- 54% said they would restrict business growth
- 37% said they would have to restrict their client offering
- 7% said their business would become unprofitable/unviable
- 7% would cancel their license and join a dealer group

Small licensee businesses and single-adviser licensees may be forced to either restrict client service offerings or cancel their license and join a dealer group.

2017 feedback from FPA members shows that this cost is substantial for small licensees, making it almost prohibitive to set up under your own AFSL.

b) Price competition

Small licensee businesses don't have the capacity to absorb these additional costs and will be forced to pass these additional costs on to consumers in the form of higher fees for their professional services (as indicated in our 2015 survey results). This will make these small licensee businesses less price competitive than their counterparts who are aligned to large licensee businesses. There is a risk that they will be priced out of the market.

c) Number of advisers

Two-thirds of medium sized licensees surveyed in 2015 indicating the additional costs would lead to a potential reduction in the number of advisers.

This inequitable levy comes at a time when all licensees will need to consider their ability to support new advisers complete the new Professional Year requirements. Diversity in the type of businesses able to offer professional year placements is crucial.

d) Cost of advice

Most concerning is the that ultimately the funding model will drive up the cost of financial advice for consumers, with 46% of those surveyed stating they would have to pass on these additional costs in the advice fees they charge clients. Of the medium sized licensee businesses surveyed, 69% said they would pass the additional cost on to the financial adviser and their clients.



Attachment 2: Competition in the Australian Financial System

Terms of reference

The Commission is to review competition in Australia's financial system with a view to improving consumer outcomes, the productivity and international competitiveness of the financial system and economy more broadly, and supporting ongoing financial system innovation, while balancing financial stability objectives.

Without limiting related matters on which the Commission may report, its report to the Government should:

1. consider the level of contestability and concentration in key segments of the financial system (including the degree of vertical and horizontal integration, and the related business models of major firms), and its implications for competition and consumer outcomes
2. examine the degree and nature of competition in the provision of personal deposit accounts and mortgages for households and of credit and financial services for small and medium sized enterprises
3. compare the competitiveness and productivity of Australia's financial system, and consequent consumer outcomes, with that of comparable countries
4. examine barriers to and enablers of innovation and competition in the system, including policy and regulation
5. prioritise any potential policy changes with reference to existing pro-competition policies to which the Government is already committed or considering in light of other inquiries.

The Commission should have regard to the Government's existing wide-ranging financial system reform agenda and its aims to:

- strengthen the resilience of the financial system
- improve the efficiency of the superannuation system
- stimulate innovation in the financial system
- support consumers of financial products being treated fairly
- strengthen regulator capabilities and accountability.