FINANCIAL PLANNING ASSOCIATION *of* AUSTRALIA

BUDGET SUBMISSION 2021-22

Financial Planning Association of Australia
29 January 2021

Summary

The Financial Planning Association of Australia ('FPA') is pleased to provide the following submission to the federal government's 2021-22 budget process.

The focus of the FPA's policy work over the past year has been the rapidly increasing cost of practicing as a financial planner and the impact this is having on the affordability of financial advice for consumers and the sustainability of the financial planning profession as a whole. Recent FPA research indicates that the average fee charged by financial planners for a statement of advice for new clients rose to $2,671 in 2019, up from $2,435 in 2018. Given the increasing cost over the last year, this figure has almost certainly risen further in 2020 putting professional financial advice out of reach of many Australians.

These issues formed the foundation of the FPA's new policy platform - Affordable Advice, Sustainable Profession - which was released in June 2020. Since the platform was released, the FPA has welcomed increasing interest from the federal government in addressing the affordability of financial advice.

In December 2020, the Australian Securities and Investments Commission ('ASIC') commenced a formal consultation on promoting access to affordable advice. While this process is still underway and does not guarantee any action by ASIC or the Government more broadly, it was heartening to see Senator the Hon Jane Hume, Minister for Superannuation, Financial Services and the Digital Economy, support the ASIC consultation in her statement of 15 January 2021.

While the FPA has made some specific recommendations to ASIC in its consultation, the reality is that there are many factors driving cost increases for financial planners and affecting the affordability of financial advice. These include the indirect costs of complying with regulation and direct costs imposed by the Government on financial planners in the form of fees and levies. This pre-budget submission will focus on the latter of these categories.

Fees and levies imposed by the Government on financial planners are done so to recover the cost of regulation. At the outset, it is worth stating that the FPA supports cost-recovery of some regulatory costs. It is appropriate that the financial services sector contributes to the cost of regulating the sector and providing consumer protections. Every business operating in financial services benefits from a strong regulatory framework that promotes public confidence and addresses consumer needs.

However, the practice of cost-recovery requires the Government to minimise the amount that is needed to be recovered by providing regulation in an efficient and effective manner. The Australian Government Cost Recovery Guidelines also provide that the Government should consider other factors in deciding how to implement cost-recovery, including the impact on competition, innovation or the financial viability of those who may need to pay the costs of regulation.

In this context, the FPA is making six recommendations in this submission that seek to promote the public interest in maintaining an efficient and effective regulatory framework for financial advice, recovering some of the cost of that framework from the financial planning profession, and addressing the affordability of financial advice for consumers.

Recommendations

1. **Fees and levies paid by financial planners to the federal government should be consolidated into a single schedule administered by ASIC, which removes duplication of fees and is limited to recovering the cost of efficient and effective oversight.**

The first step in considering the direct costs of financial planners is to establish a consolidated view of those fees and charges. Current fees and levies include those imposed by ASIC, the Tax Practitioners Board, and indirectly from the Australian Financial Complaints Authority. Financial planners are also likely to see fees relating to the new disciplinary body and compensation scheme of last resort in the near future.

There is a lack of a consolidated view of these fees and levies, which are currently published individually by the agencies that collect them. As a result, policy discussions on the rate and increases to fees and levies is focused on the different government agencies that collect them rather than the practitioners that pay them. Establishing a single schedule of fees and levies paid by financial planners would allow for more informed policy discussions about the impact of fee and levy increases and better coordination between the agencies that are collecting them.

A consolidated schedule of fees and charges could be created by Treasury or ASIC at little to no cost to the Government.

2. **The ASIC industry levy should be reviewed with the goal of providing a more predictable annual levy and constraining year-on-year increases to better reflect the capacity of the financial planning profession to support regulatory costs.**

The ASIC industry funding levy is relatively new, having been applied for the first time for the 2017-18 financial year. The goal of the levy is to recover most of ASIC's regulatory costs from regulated industries, including the financial planning sector. With three years' of experience collecting the industry levy, two major problems are apparent.

Firstly, the levy amount each year has proved to be unpredictable even in the months before it is due to be paid by financial planners. For example, for the 2018-19 financial year ASIC predicted in March of 2019 that the per financial planner amount for the levy would be $907. By the time invoices for this year were issued in January 2020, the per financial planner amount had risen to $1142. This is a 26 per cent increase in just ten months.

Similarly, for the 2019-20 financial year ASIC predicted in March of 2020 that the per financial planner amount for the levy would be $1571. When invoices for the 2019-20 financial year are issued in the coming weeks, the FPA expects the amount will have increased further to around $2,000 - an increase of nearly a third.

This unpredictability of the levy amount makes it practically impossible for a financial planner to effectively budget for this business cost.

Secondly, the levy has been increasing at a dramatic rate that far outstrips the rate of revenue growth for most financial planning businesses and is being exacerbated by a reduction in the number of financial planners from whom the levy must be recovered. As noted above, the levy per financial planner has increased from $934 in 2017-18 to approximately $2,000 in 2019-20. In three years of operation, the levy for financial planners will likely have more than doubled and there is no indication that increases of this scale will cease for 2020-21 or future years.

Over the 2019-20 financial year, the number of financial planners from which this budget must be recovered has fallen from around 25,600 to around 22,500 - a loss of 3,100. We know this trend will continue at least for the next few years, with around 21,200 financial planners currently registered and the potential for further reductions as the deadlines for meeting new professional standards are reached in coming years.

ASIC has cited increased enforcement costs as the primary reason for the increases in the industry levy applied to financial planners. This argument is consistent with ASIC's budget figures, which show an increase in expenditure on the oversight of financial advice from $25.6 million in 2017-18 to $56.2 million in 2019-20.

As a first step in addressing these twin challenges of predictability and dramatic levy increases the Government should undertake to review the ASIC industry levy. As it has been three years since the levy was first introduced, it would be an appropriate time to review its implementation and impact on the financial services sector.

The review should consider whether the current method of recovering the entirety of ASIC costs relating to financial advice through the levy is appropriate, particularly given that much of the additional cost being recovered relates to specific enforcement action against a small number of financial services businesses. It should also consider whether the operation of the levy, and in particular its unpredictable increases, is having a negative impact on competition and the viability of financial planning businesses.

A review of the ASIC industry levy should consider whether there are more appropriate ways of funding ASIC enforcement activity than solely through a broad application levy. For example, allowing ASIC to retain fines and court-ordered costs that relate to the enforcement action may be reasonable as that action often results in a significant increase in costs to ASIC. The review could also consider whether a speed limit should be applied to the industry levy to constrain year-on-year increases to the levy amount.

A combination of these or other changes to the industry levy could ensure that financial planners make a fair contribution to the cost of regulating their profession while limiting the negative impacts of the unpredictable and dramatic levy increases of recent years, and ensuring the levy remains sustainable into the future. These improvements would have a flow-on impact on the viability of financial planning practices and the affordability of financial advice for consumers.

3. **The design of the single disciplinary body for financial planners within ASIC should focus on reducing duplication with other regulatory functions and providing an effective disciplinary function in the most efficient and cost-effective manner.**

The Government has committed to implementing recommendation 2.10 from the Financial Services Royal Commission which requires the establishment of a single disciplinary system for financial planners to replace the fragmented system that currently operates. The FPA supports the Government's decision to establish a single disciplinary system as it is an opportunity to streamline the existing regulatory framework for financial advice and ensure that it is efficient and effective. Current arrangements involve a lot of duplication and unnecessary complexity, the cost of which is ultimately borne by financial planners and their clients, and yet they have not always been effective at addressing misconduct issues or promoting high professional standards.

For this reason, the FPA welcomed the Government's decision in December 2020 to wind up the Financial Adviser Standards and Ethics Authority ('FASEA'). FASEA has completed the bulk of its work in setting new professional standards for financial planners. It's residual functions - including operating the professional exam, approving new education courses and updating standards where necessary - are relatively minor and could be delivered by other agencies, including the Treasury and ASIC, in a more cost-effective manner.

In December 2020, the Government also announced that it would establish the required single disciplinary system for financial planners within ASIC by building on the Financial Services and Credit Panel. The design of this function remains under consideration by the Treasury and is expected to be settled over the next six months. How this function is established and operates is critical to achieve the outcomes intended by the Financial Services Royal Commission.

The focus of the Treasury's design work must be to ensure the disciplinary function is effective at overseeing and managing disciplinary action at the practitioner level and also that this function is delivered in a cost-effective manner. The FPA has significant expertise in operating a practitioner-focused disciplinary system, both through the application of its own Code of Professional Conduct and in designing a compliance scheme for the FASEA Code of Ethics, and has offered its expertise to the Treasury to assist in its design work.

The FPA's view is that the disciplinary system should: have the capacity to oversee financial planners directly, rather than relying on licensees and other institutional stakeholders; reduce duplication between oversight at the multiple regulator level, licensee level and with financial planners directly; and be constructed to fulfil this function in a cost-effective manner.

4. **The Tax Practitioners Board should pursue an MOU with ASIC to ensure tax (financial) advice complaints are primarily heard by the single disciplinary function being established within ASIC.**

A further challenge in establishing a single disciplinary system for financial planners is setting the role for the Tax Practitioners Board ('TPB') in overseeing 'tax (financial) advisers'. Most financial advice includes tax advice and the TPB has had a role in overseeing and disciplining financial planners since 2014.

While the TPB has a legitimate role in overseeing all tax advice, there remains a question on whether it should continue in this role for financial planners in practice. Most recently, the Government's review of the TPB concluded that this question should be answered in the context of the Government's creation of a single disciplinary system for financial planners.

The FPA's view is that the best option would be to maintain a formal role for the TPB in overseeing all tax advice, but for the TPB to refer oversight and disciplinary functions for financial planners to the single disciplinary system being established within ASIC. This could be achieved through an MOU that provides for all disciplinary matters relating to financial planners to be investigated and addressed by ASIC and for the TPB to make available tax expertise to ASIC where it is needed to resolve a complaint.

A formal arrangement between the TPB and ASIC would ensure there is clear responsibility for overseeing and disciplining financial planners with a single body, giving both consumers and financial planners confidence that disciplinary matters will be resolved quickly and effectively. It has the potential to reduce duplication if financial planners are subject to a single registration fee for their disciplinary body, rather than multiple fees for multiple different agencies. This option would also allow ASIC to consolidate the registration of financial planners into a single register, rather than the current arrangement where ASIC, TPB and FASEA all have separate registers.

5. **The design of a compensation scheme of last resort should include a sustainable and broad funding base that includes all participants in the financial services industry and does not solely rely on contributions from financial planners.**

A second major piece of policy work stemming from the Financial Services Royal Commission and due to be implemented in 2021 is the establishment of a compensation scheme of last resort ('CSLR'). A CSLR that raises funding from the participants in the financial services sector has the potential to significantly add to the cost of operating as a financial planner and therefore the cost to consumers of receiving financial advice.

The FPA supports the Government taking action to ensure that consumers with unpaid determinations against financial services businesses are able to recover compensation. The FPA has recommended that the Government, as a first step in this process, should focus on reducing the number of determination that remain unpaid by better policing capitalisation and professional indemnity insurance requirements. This would have the effect of minimising the number of claims that a CSLR may need to fund and thereby reducing the cost of a CSLR to the financial services sector.

The design of a CSLR also becomes a critical issue for the cost of operating as a financial planner and the affordability of financial advice. In particular, the manner in which the CSLR raises funding from the financial services sector will have a significant bearing on its success. While no business would choose to contribute to a CSLR, a broad-based funding model is essential to a CSLR's long-term sustainability. A narrowly focussed funding model, such as one in which funding was only raised from a small part of the financial services sector, would make a CSLR vulnerable to funding shortfalls. This, in turn, would limit its effectiveness and undermine the confidence of consumers in the CSLR.

6. All financial advice should have tax deductible status, regardless of what stage of the financial advice process it is provided and whether it directly relates to the creation of investment income.

As a final recommendation to address the issue of affordability of financial advice, the FPA continues to recommend that the Government take action to make all financial advice tax deductible.

Tax treatments are applied to financial advice in a variety of ways depending on the nature of the advice and when it is provided. For example, the Australian Taxation Office ('ATO') has declared that a fee for service arrangement for the preparation of an initial financial plan is not tax deductible. This is different to the treatment of an ongoing advice fee, which is deemed to be incurred in the course of gaining or producing assessable income and therefore is tax deductible.

Treating the creation of an initial financial plan differently from ongoing advice is a disincentive for people to get financial advice to help them actively plan, save and secure their financial future. It acts as a barrier to entry for people who have not previously received financial advice.

The benefits of tax deductions available for ongoing financial advice predominantly fall to people who can already afford financial advice and have established investment portfolios. These are predominantly people on higher incomes and with higher net wealth.

Increasing access to financial advice for all Australians, including those on lower incomes, will result in a more financially capable community, with individuals more financially literate and better able to support themselves including in retirement. Access to financial advice also assists the government to fulfil its obligation to address the substantial issues of financial and social exclusion by helping consumers gain access to expertise to help them navigate the financial marketplace and learn how to better manage their finances.

While providing a tax deduction for fees associated with the preparation of an initial financial plan would involve some additional costs to the government, these costs should be balanced against the long-term benefits in supporting a more financially literate community. To control the budget impact, the government could include caps on either the size of the tax deduction or an income cap on those able to receive a deduction.