



FINANCIAL PLANNING
ASSOCIATION *of* AUSTRALIA

7 October 2022

Financial System Division
Treasury
Langton Cres
Parkes ACT 2600

Email: CSLR@treasury.gov.au

Dear Sir / Madam

Re: Exposure Draft - Corporations Amendments (CSLR) Regulations 2022, Financial Services Compensation Scheme of Last Resort Regulations 2022

The Financial Planning Association of Australia¹ (FPA) welcomes the opportunity to provide feedback to Treasury on the exposure draft Corporations Amendments (CSLR) Regulations 2022, Financial Services Compensation Scheme of Last Resort Regulations 2022, and associated explanatory statements.

The FPA strongly opposes the design of the CSLR funding model proposed in the exposure draft regulations. However, if these arrangements are introduced, we strongly recommend that the existing regulatory and compensation framework is improved beforehand; and that each participant in the financial services industry is required to take responsibility for what they do.

If you have any queries or comments, please do not hesitate to contact me at policy@fpa.com.au or on 02 9220 4500.

Yours sincerely

Ben Marshan CFP® LRS®

Head of Policy, Strategy and Innovation

Financial Planning Association of Australia

¹ The Financial Planning Association (FPA) is a professional body with almost 12,000 individual members and affiliates of whom around 10,500 are practising financial planners and nearly 5,000 are CFP professionals. Since 1992, 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 superannuation for our members – years ahead of the Future of Financial Advice reforms.
- The FPA was 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 that explain and underpin professional financial planning practices.
- We have an independent Conduct Review Commission, chaired independently, dealing with investigations and complaints against our members for breaches of our professional rules.
- We built a curriculum with 18 Australian Universities for degrees in financial planning through the Financial Planning Education Council (FPEC) which we established in 2011. Since 1 July 2013 all new members of the FPA have been required to hold, or be working towards, as a minimum, an approved undergraduate degree.
- When the Financial Adviser Standards and Ethics Authority (FASEA) was established, the FPEC ‘gifted’ this financial planning curriculum and accreditation framework to FASEA to assist the Standards Body with its work.
- We are recognised as a professional body by the Tax Practitioners Board.



CORPORATIONS AMENDMENTS (CSLR) REGULATIONS 2022

Reporting by the CSLR operator if the sub-sector levy cap could be exceeded

7.10B.50 of the draft Corporations Amendment (Financial Services Compensation Scheme of Last Resort) Regulations identifies the information that should be included in a notice to the Minister by CSLR operator if a sub-sector levy cap could be exceeded (or further exceeded), as required under s1069F(3) of the Financial Sector Reform Bill 2022.

The draft Explanatory Statement for the Regulations states that:

“The purpose of this information is to assist the Minister in their decision-making process. The notice will provide the Minister with the facts that led to a revised estimate being made which will cause the sub-sector cap to be exceeded. “

The compensation payment limit is \$150,000. The levy cap for a sub sector is \$20million under s17 of the Financial Services Compensation Scheme of Last Resort Levy Bill 2022 currently before Parliament. This equates to approximately 133 persons receiving maximum compensation from one sub sector. The CSLR caps are substantial and create a significant moral hazard. If a levy cap is exceeded, it would likely indicate a substantial or systemic issue within sub-sector or entity.

After commencement, the Bill would give the Minister the power to make a determination giving permission for the CSLR operator to collect a special levy and/or further special levy from CSLR members in circumstances where the fees and costs of the scheme exceed the legislated sub-sector levy cap.

However, the draft Regulations require information based on the funding of the compensation payment. It does not require the CSLR Operator to include in its notice to the Minister:

- the reason for the levy cap to be exceeded, or
- why the AFCA determinations were not paid by the AFCA members party to the complaints and were therefore referred to the CSLR, or
- the efforts AFCA exhausted to secure compensation for the eligible persons from the at fault entity, or
- the underlying cause of the complaints resulting in the need for a special levy to be imposed, or
- for visibility, other subsectors which may have been involved in causing the consumer detriment.

The FPA suggests this should be considered as critical information necessary for the Minister to make an informed decision in relation to a CSLR Operator's request to impose a special or further levy on a sub-sector.

Reporting by CSLR operator after the end of each levy period

Draft Regulation 7.10B.55 prescribes the information that must be contained in the CSLR Operator report for a levy period, including information about any patterns or trends identified amongst the applications received during the levy period.

Given the role of the CSLR is to be the provider of compensation as a last resort when all other avenues have not resulted in the consumer be receiving awarded payment, it would be pertinent



for the Regulations to be very clear that the following data be collected and reported in the Operator's report:

- information about the underlying reason that compensation awarded under an AFCA determination was not paid by the AFCA member party to the complaint,
- the efforts AFCA exhausted to secure compensation for the eligible persons from the at fault AFCA member, and
- the underlying cause of the complaints subject to an application to the CSLR (including other sub-sectors deemed to be at fault).

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Sections 7 and 8 – General conditions for imposition of annual levy and special levy; and Section 10 – Section 17 Levy components etc

Application of ASIC Industry Funding Model to CSLR

Section 12 *Entity metrics* of the Regulations prescribe that the CSLR levy will be calculated on the formula set under the ASIC Supervisory Cost Recovery Levy Regulations 2017 for the ASIC Industry Funding Model (IFM).

The intent of the ASIC levy, as with the CSLR levy, is to ensure that all entities pay their share proportionate to the size of the business - *the greater the number of advisers, the larger the number of clients able to be serviced and the higher the level of regulatory oversight required*².

However, large licensees have progressively and significantly reduced their footprint in the advice market since 2015^{3,4}.

Institution	Adviser numbers 2015	Adviser numbers 2022
AMP	3,266	1,035
ANZ	1,239	0
CBA	1,159	0
Macquarie	328	182
NAB ⁵	1,773	0

² ASIC draft CRIS 2021

³ Wealth Data - <https://wealthdata.com.au/adviser-movement-fast-facts>

⁴ ASIC Financial Adviser Register – <https://data.gov.au/dataset/ds-dga-f2b7c2c1-f4ef-4ae9-aba5-45c19e4d3038/details?q=financial%20adviser%20register> – version 14/07/2022

⁵ On 31 August 2020 NAB entered into a Sale and Purchase Agreement to sell 100% of MLC Wealth (MLC) to IOOF Holdings Ltd - https://news.nab.com.au/news_room_posts/nab-announces-agreement-to-sell-mlc-wealth-to-ioof/. The new IOOF will have number of advisers – 1,884 advisers - IOOF financial adviser numbers sourced from ASIC financial adviser register (as at 20 August 2020). MLC adviser numbers sourced from NAB as at 30 June 2020. Assumes all current MLC financial advisers transition to IOOF. Based on active MLC advisers only. - https://www.ioof.com.au/data/assets/pdf_file/0012/403311/IOOF-FY20-results-and-MLC-acquisition-announcement.pdf



Institution	Adviser numbers 2015	Adviser numbers 2022
Westpac	1,187	0
Total	8,952	1,217

The Regulator's enforcement investigations for misconduct by these specific Australian financial services (AFS) licensees, and the licensee review and remediation programs of consumers affected by this misconduct, has been ongoing since the commencement of ASIC's investigations of this matter 2015.

The compensation paid or offered by these six institutions since the inception of this program is \$5.6billion (with an estimated \$1.6billion left to pay) paid to seven million Australians⁶. The amount of compensation paid or offered, and the substantial number of consumers involved, indicates that there was a significant amount of ASIC surveillance and investigation activity and resources involved to provide effective regulatory oversight of these licensees' ongoing remediation programs during the last financial year.

The exodus by these licensees from the personal financial advice to retail clients on relevant financial products subsector has had a marked impact on the advice market and the levies paid by other licensees. This is because the ASIC levy is charged to licensees based on the number of financial advisers listed on the ASIC FAR as at 30 June 2022. Given the significant withdrawal from the personal advice to retail clients by these six large licensees, they have not incurred a levy for this ASIC investigation and enforcement activity.

A further concern with the proposed model is that the ASIC IFM categorisation does not align with AFCA member categorisation. This has long been a concern that the way AFCA bundles sub-sectors together does not match the way they are regulated by ASIC and makes it difficult analyse AFCA determinations for specific sub-sectors. The FPA recommends AFCA look to implement the same sector categorisations as ASIC going forwards.

The FPA opposes the CSLR funding mechanism in the draft Regulations relying on the ASIC Industry Funding Model, which is fundamentally flawed and currently subject to Treasury Review in relation to licensees who provide personal advice on relevant financial products to retail clients. This review is being conducted to ensure it is equitable and appropriate for the longer term which is not currently the case.

The FPA therefore suggests it is inappropriate to use the ASIC IFM which is not 'fit for purpose' in its current form for the CSLR and pre-empt the outcome of Industry Funding Model Review.

While the FPA supports a mechanism by which all licensees contribute to the cost of the CSLR (in a similar way to AFCA membership) to ensure all participants have a role in improving the conduct and consumer outcomes for the profession more broadly, the graduated levy should be based on a risk-based approach where the larger the risk of consumers going uncompensated, the larger the levy. On this basis, the FPA recommends that the graduated levy be charged to licensees who have AFCA cases which progress past the merits assessment and have a finding in favour of the complainant.

⁶ 22-260MR ASIC publishes updated and expanded remediation guidance - <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2022-releases/22-260mr-asic-publishes-updated-and-expanded-remediation-guidance/>



Sub-sector member and application of levy

The general conditions for imposing the annual levy for the CSLR are set in s7 of the Financial Services Compensation Scheme of Last Resort Levy Bill 2022. The levy will be imposed on a person if the person meets the criteria **at any time** during the qualifying period (financial year).

The FPA supports the imposition of the annual levy to be based on meeting the criteria **at any time** during the qualifying period.

However, s12 *Entity metrics* of the Regulations prescribe that the CSLR levy will be calculated on the formula set under the ASIC Supervisory Cost Recovery Levy Regulations 2017 for the ASIC Industry Funding Model (IFM).

As detailed in item 3 of the table in s12(1) of the draft Regulations, the entity metrics for AFSL personal advice to retail clients is based on the number of relevant providers that are registered on the Register of Relevant Providers **at the end of the levy period**.

This creates an inconsistency and highlights another flaw with the ASIC funding model for the purposed of calculating the personal advice component of the CSLR levy model.

The FPA is additionally concerned in relation to the following two issues:

- Firstly, the sub-sector definition used in the ASIC IFM model does not match the definitions used by AFCA in relation to the different classes of financial product advice, specifically the differences between general, personal and wholesale advice thresholds.
- Secondly, where AFCA determines that either general or wholesale advice is in fact personal advice, neither of these subsectors will be required to contribute to the CSLR meaning personal advice licensees will be covering compensation for these sectors.

Sub sector levy cap

An additional concern for the FPA is the current distribution of licensees. It is also important the financial planning sector has undergone significant structural changes since the *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry*. The number of financial planners has firstly dropped from just under 29,000 individuals to a current number below 16,000. Further, while 70% of financial planners at that time were licensed by the top 10 financial advice licensees (i.e. the banks and AMP), 60% of financial planners now run their own licensees and small financial planning businesses. These sole traders and small businesses cannot afford the continuing rising costs associated with increased complex regulation. The proposed scheme therefore risks making financial advice less affordable and accessible in an environment where increasing complexity in markets and Australia's ageing population mean that the need for advice continues to grow.

Merged Lic Owner	Next Level - Lic	Curr Num of Adv	% All Curr Adv	Advisers at Start	% Adv Start	Net Change - Advisers	Growth % - Display
INSIGNIA GROUP		1,092	6.72%	2,420	8.62%	-1,328	-55%
AMP GROUP		998	6.14%	2,474	8.82%	-1,476	-60%
CENTREPOINT GRO..		525	3.23%	661	2.36%	-136	-21%
WT FINANCIAL GRO..		494	3.04%	738	2.63%	-244	-33%
MORGANS GROUP		447	2.75%	506	1.80%	-59	-12%
DIVERGER LIMITED		422	2.60%	977	3.48%	-555	-57%
SEQUOIA GROUP		324	1.99%	385	1.37%	-61	-16%
COUNT GROUP		285	1.75%	506	1.80%	-221	-44%
ORD MINNETT GRO..		272	1.67%	399	1.42%	-127	-32%
NATIONAL TAX & AC..		268	1.65%	1,096	3.91%	-828	-76%

Source: Wealthdata



Should the Minister approve a special or further levy, the FPA is concerned about the financial impact this may have on small financial planning businesses in a period when regulatory costs continue to escalate through the imposition of more regulatory obligations (including the funding of the CSLR).

As noted last year by FPA and seven other associations⁷, most financial planners are now sole traders and small businesses who cannot afford the rising costs associated with increased regulation more broadly and may need time to deal with an additional special or further levy.

There is additionally a lack of clarity on how long licensees will have to pay the special or further levy in the regulations which needs to be clarified.

Deregistered person

Section 10 of the draft Regulations states that the levy for a person who is deregistered is nil. Similarly, a person about whom ASIC has published a notice of proposed deregistration will not incur a CSLR annual levy.

The draft Explanatory Statement for the Regulations states:

In such cases, the amount of the annual levy that would otherwise have been payable will not be recovered as the relevant person no longer exists.

It is unclear whether this means the levy in relation to the specific deregistered person will not be recovered at all either from that person or from other persons in that sub sector. Or will the remaining persons in the relevant sub sector incur the costs unrecovered from the deregistered person?

The FPA seeks clarity regarding the recovery of the annual levy for deregistered persons.

Section 18 – Amount of levy to fund scheme costs before the accumulation recovery day

Section 18 refers to the establishment costs of the CSLR. The draft ES to the Levy Regulations states that:

This section prescribes the formula for calculating the amount of levy payable by the top ten banking and insurance groups in Australia.

However, this is unclear in s18 of the draft Levy Regulations. To ensure a clear understanding of the requirements in an accessible way, the FPA suggests it would be helpful to make it clear in the Levy Regulations the entities that s18 applies to. This could be achieved in a note to the section.

⁷ Compensation scheme of last resort may be last straw for financial advice industry.

<https://fpa.com.au/news/compensation-scheme-of-last-resort-may-be-last-straw-for-financial-advice-industry/>