

CSLR– Poor Design and Implementation by Government

Throughout our advocacy on the CSLR, the FAAA has set out a range of concerns and a list of options to fix the problem. We have spoken about our anger at the way that E&P Financial Group were able to walk away from Dixon Advisory with little consequence, and how ASIC did not do enough to prevent the Dixon Advisory debacle or to prosecute those responsible. We have also spoken about our dissatisfaction with how the Insolvency laws in Australia have allowed this to happen.

Ultimately, however the CSLR is a Government initiative and the FAAA firmly believes that the Federal Government has let the financial advice profession down in the design and implementation of the scheme. Three of our most significant concerns have been:

- the retrospective application of the scheme,
- the Government only paying for the first three months, rather than 12 months as initially committed, and
- the failure to appropriately disclose what the CSLR would cost and what the likely implications and consequences were.

In this article we address these three key objections that we are directing at the Government.

Government delivers a retrospective CSLR

Right from the very start, with the recommendation from the 2017 Ramsay Inquiry, it was always proposed that the “CSLR should apply prospectively, which means that only unpaid decisions which arise after a CSLR was established would be eligible for compensation”. This design principle was also supported by the Hayne Royal Commission final report.

The Morrison Government then came up with the idea that the 10 largest financial institutions could pay for the pre-CSLR complaints. When the Albanese Government introduced the CSLR legislation into the Parliament on 8 September 2022, they set the day prior to the introduction of the legislation (7 September 2022) as the cut-off date, with the 10 largest financial institutions paying for all claims received up to that date. There were already 1,638 Dixon Advisory complaints at that cut-off date, which these large financial institutions would be paying for. The legislation did not proceed at that time. However, when the Albanese Government reintroduced the legislation some six months later, on 8 March 2023, they specifically decided to avoid changing the cut-off date to the day before the new introduction date. According to [Ministerial submissions issued under Freedom of Information](#) in December 2023, it would appear that the Government felt that the “Major Banks, general insurers and life insurers who will be captured by the one-off levy will likely re-prosecute their previous objections” if changes were made to their disadvantage. That is understandable on the part of these institutions, however this meant that

complaints received between 8 September 2022 and the establishment of the scheme (an unidentified date at that time) would fall on financial advisers. The Government went ahead with a model that had moved even further away from the concept of a prospective scheme. The reality that the advice profession is now being forced to pay for 1,134 post cut-off date claims for Dixon Advisory, which was already in administration over two years before the scheme commenced, is particularly concerning. The fact that the Government also cut back the period that they committed to covering as part of the initial CSLR levy from 12 months to 3 months, only helps to inflame this issue of retrospectivity.

Further, with the changes that the Government made to the CSLR Bill in March 2023, there was no consultation with the advice profession, despite the rapid increase in the importance of the Dixon Advisory matter and the fact that it was clear that some of the changes to the Bill would have a huge impact on the advice profession. The December 2023 [FOI papers](#) clearly show that the Government made the decision not to consult publicly on these March 2023 changes. These documents obtained under FOI are critical, as they relate to a change in the legislation that enabled any shortfall in the one-off levy for pre-CSLR claims, to be recovered through later industry funded levies. Specifically, these documents note "As the vast majority of the [AFCA complaints] backlog relates to Dixon Advisory, any shortfall is likely to be collected from the financial advice sub-sector". Surely this is something that they should have informed us about and provided the opportunity for consultation. Neither did the Government consult with the advice profession in the lead up to the September 2022 version of the legislation, when they doubled the sector cap from \$10m to \$20m. This is another important point of contention that the Opposition have picked up on and are seemingly willing to revisit. Consultation with impacted parties is an important part of the process and one that should be considered as part of the Impact Analysis requirement, that they seemingly did not undertake.

Government commitment to paying for the first year

In the legislation that was tabled by the Morrison Government in October 2021 and in the version tabled by the current Government in September 2022, it was very clear that the Government would pay for the first 12 months of the scheme, in terms of both operating costs and claims. Their commitment to pay for the first 12 months was welcomed and expected to assist with making sure that the scheme was truly prospective.

When the legislation was reintroduced in March 2023, the way this was framed had changed and it allowed the Minister to determine the start date of the scheme, and thus the length of the first levy period which the Government would pay for. The December 2023 [FOI papers](#) suggest at that time they expected it to be reduced to 7 months, although later decisions reduced it to just 3 months. This was a deliberate decision made in the full knowledge that the Dixon Advisory debacle was getting bigger and bigger, and the cost would be much greater. The advice to the Minister, as discovered through the December 2023 [FOI papers](#), makes it very clear that they were well aware of the potential implications of Dixon Advisory on the cost to the Government and even acknowledged the likely impact on the financial advice sector.

Ultimately, the legislation provided the power to the Minister to decide the commencement date for the scheme, with 2 April 2024 chosen, leaving the Government responsible for just the three-month period to 30 June 2024. The cost of this first period to the Government, as estimated by the CSLR actuaries, was just \$4.8m, versus the \$24.1m for the second, industry funded, period. What made it even worse is that this short period allowed very little time for the CSLR to process any payments for unpaid determinations, and in fact the actuarial estimate resulted in the Government paying for just one of the Dixon Advisory complaints. The extent to which the Government were able to back away from their commitment to share in the cost of the establishment of the scheme is clearly illustrated by the following table that was included in an FAAA media release on 11 July 2024.

Dixon Advisory – who pays and how much?

Period	Complaints received up to 7 September 2022	Complaints finalised between 2/4/2024 – 30/6/2024	Estimate for complaints finalised from 1/7/2024 on	Total
Funder	Top 10 APRA-regulated financial institutions (excluding super funds and health insurers)	Government	Financial advice profession	
Dixons complaints - #	1,638	1	1,134	2,773
Dixons complaints - \$	\$203,000,000	\$147,000	\$135,471,042	\$338,618,042

The Treasury officials who compiled a Q&A pack for the Bill (released under the December 2023 FOI), demonstrated a complete disregard for the implications on the financial advice profession in framing the following Q&A:

Won't the scheme make financial advice more unaffordable without fixing the real issues?

Any costs that financial advice licensees face from the CSLR is a direct reflection of misconduct and insolvencies occurring within the sector. The advice sector can reduce those costs by doing it can to eliminate misconduct and insolvencies.

The advice profession is furious about this type of comment in the full knowledge that the Dixon Advisory problems had been repeatedly reported to ASIC over many years, and that they took so long to act. In response to a June 2024 Senate Estimates Question on Notice from Senator Andrew Bragg (Ref BET098), ASIC acknowledged that they had received 60 reports of misconduct in relation to Dixon Advisory between October 2008 and September 2022, and no doubt many were from advisers. ASIC's own submission to the Senate Economics Committee's Wealth Management Companies Inquiry admits that they initially undertook a significant surveillance exercise with respect to Dixon Advisory in 2015, yet evidently took no action.

Failure of Disclosure by Government

Accompanying every Bill that goes in front of the Parliament is an Explanatory Memorandum (EM), that explains what the Bill is trying to achieve and the implications of the Bill. A review of the [Explanatory Memorandum](#) for the three Bills that make up the CSLR package, is an interesting exercise in the context of what has blown up with Dixon Advisory and the CSLR. The first point to make is that there is absolutely no reference, whatsoever, to Dixon Advisory. Given that the December 2023 FOI information makes it very clear that the Government were well aware of the scale of the Dixon Advisory scandal back in August 2022, well before this EM was released on 8 March 2023, it is difficult to comprehend that there was literally no mention of Dixon Advisory. This was an important Bill, with significant financial consequences that was being tabled in the Federal Parliament of Australia, with the politicians expected to vote and legislate a scheme that would involve hundreds of millions of dollars being levied on companies and individuals across Australia.

Further, the EM includes the following section on the financial impact of the CSLR.

Financial impact			
The estimated financial costs of the CSLR are indicative and dependent on a number of key factors including the scheme commencement date and AFCA complaint consideration processes. All figures in this table represent amounts in \$m.			
2022-23	2023-24	2024-25	2025-26
-2.7	0.5	-0.1	-1.6

Although subject to a careful disclaimer, the numbers in this table are quite meaningless and demonstrate no context of the scale of the Dixon Advisory scandal known by Government at that time. The December 2023 [FOI papers](#) include a Ministerial submission from Treasury in February 2023, that provides some context to this:

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- Given the timeframes to finalise the legislation for reintroduction in March 2023, we will be unable to agree revised costs with the Department of Finance. Accordingly, the financial impact as disclosed in the explanatory memorandum when the Bills were introduced into Parliament last year is proposed to also be included in the explanatory memorandum for the newly finalised Bills.
 - In line with guidance from Finance, we propose to make it clear in the Explanatory Memorandum that the estimated financial impacts of the scheme are indicative and are dependent on a number of key factors, including scheme start date and AFCA complaint consideration processes and related timeframes.

This highlights the significant risk that this legislation was being presented to the parliament in the absence of critical information.

To cap it off, the EM includes the following section on the Impact Analysis. Here the Government is, in the full knowledge of the scale of the Dixon Advisory debacle, seeking to rely upon the 2019 final report of the Hayne Royal Commission, which was released more than four years earlier and nearly three years before Dixon Advisory went into administration, as the basis for not doing an Impact Analysis. This is the weakest excuse, particularly in the full knowledge of the Dixon Advisory scandal.

Impact Analysis

The Financial Services Royal Commission Final Report has been certified as being informed by a process and analysis equivalent to an Impact Analysis for the purposes of the Government decision to implement this reform. The Financial Services Royal Commission Final Report can be accessed through the Australian Parliament House website.¹

This excuse has been rolled out time and time again since the Hayne Royal Commission, as an excuse for not doing the essential work of an Impact Analysis. We have even more reason to find this excuse totally unacceptable. The [Letters Patent](#) for the Hayne Royal Commission required the Commissioner to give consideration to the implications of any recommendations quite broadly (see clause k below).

- (k) We direct you to have regard to the implications of any changes to laws, that you propose to recommend, for the economy generally, for access to and the cost of financial services for consumers, for competition in the financial sector and for financial system stability; and

There was however no impact assessment in the Hayne final report, specifically for the CSLR recommendation nor any other financial advice recommendation. The Hayne Royal

Commission final report did not include any numbers at all on the cost of the CSLR or any reference to the impact on the cost of financial advice.

This seeming avoidance of the Impact Analysis exercise is in direct contrast to the Government's own [Guide to Policy Impact Analysis](#), which states that "Impact Analysis is required for all policy proposals of government that would be expected to drive a change in behaviour such as changes to rights, powers, obligations or responsibilities where those changes would have major impacts on our community". As the December 2023 [FOI papers](#) and Treasury's submission to the relevant Ministers demonstrate, it was clear that the establishment of the CSLR involved substantive reform. Facing a potential hit for Dixon Advisory alone of \$135m, the financial advice profession is in no doubt about the significance of the impact of this reform.

As [recently reported](#), the FAAA has [obtained documents through a Freedom of information](#) application to the Office of Impact Analysis (part of the Department of Prime Minister and Cabinet), which demonstrates that the Government appears not to have undertaken any assessment of the cost of the CSLR for the financial advice profession, despite the clear obligation to do so. It took four and a half months to get these documents under FOI, which reveal very little.

For all of these reasons, in our view, it is totally unacceptable to not have done an Impact Analysis for the CSLR. This appears to raise important questions about due process and the accountability of Government.

I trust that you can see why we are angry with the way the Government avoided disclosure on the implications of the CSLR and pushed this through the Parliament, forcing parliamentarians to vote on an important Bill when they were both unaware of the consequences and where important information had been withheld.