FINANCIAL ADVICE ASSOCIATION AUSTRALIA

18 February 2026

The Treasury

Via email to: CSLR@Treasury.gov.au

Dear Treasury,

Consultation – Enhancing the effectiveness of financial services professional indemnity insurance

The Financial Advice Association of Australia[1] (FAAA) welcomes the opportunity to provide feedback to Treasury on enhancing professional indemnity insurance.

We recognise the importance of professional indemnity insurance (PII) as one of the mechanisms to fund compensation for those who have a valid claim against a financial advice firm. However, we do not believe potential changes to PII obligations will materially reduce the financial exposure facing victims of financial collapses (Shield and First Guardian being notable examples), nor will they materially improve the sustainability of the Compensation Scheme of Last Resort (CSLR). Urgent reforms to improve the sustainability of the CSLR, to address financial firm conflicts of interest and lax governance, and to promote active enforcement are necessary. The FAAA welcomes the Government's commitment to concurrent reforms and we understand further consultation is imminent on these.

With limited legislative drafting and policy resources, we urge the Government and Parliament to act swiftly to address the looming financial burden of the 2026/27 and 2027/28 CSLR special levies. An industry-funded compensation scheme that insulates wrongdoers from financial consequences encourages further poor behaviour, erodes consumer confidence and impedes the flow of capital into productive investments. It is our view that CSLR reforms will have a greater impact on confidence and system integrity and need to be prioritised.

[1] The Financial Advice Association of Australia (FAAA) is the largest association representing the financial advice profession in Australia, with over 10,000 members. It was formed in 2023 following the merger of the two leading financial planning/advice bodies in Australia – the Financial Planning Association (FPA) and the Association of Financial Advisers (AFA). With this merger, a united professional association that advocates for the interests of financial advisers and their clients across the country was created.

Summary of FAAA Key Recommendations

The FAAA has recommendations in four key areas:

PII has to work across the financial services value chain.

- MISs need to play a much greater role in ensuring that clients can be compensated when they are the subject of misconduct and experience loss as a result of product failure.
- The AFCA rule (C1.5) that excludes complaints about the management of a scheme or fund as a whole needs to be removed, to better empower clients to make complaints and benefit from PII covered held by MISs and super funds.
- There needs to be a better solution for other responsible parties to contribute to the compensation of clients, including research houses, auditors and others.

Improved PII data.

- We call for the publication of data on the role that PII has played with respect to failed firms that have been the subject of CSLR payments. We believe that information on PII claims made, accepted and rejected, along with reasons, is vital to inform appropriate actions.
- We recommend that APRA collect and publish data on premiums paid, claims made (number and dollar amount), claims rejected, reasons for rejection and the profitability of the financial advice PII market.
- When undertaking reviews on the adequacy of PII cover (as we propose below), we recommend that ASIC collect and consider data on the licensees' approach to the allocation of premiums to authorised representatives and their policy with respect to run-off cover for advisers leaving the licensee. We recommend consideration of disclosure obligations for licensees and restrictions on the ability to charge for run-off cover.

Monitoring adequacy of PII.

- We recommend that ASIC should use financial reporting information and the AFSL audit exercise to identify and investigate cases where the level of PII cover is significantly less than the requirements in RG 126.
- We recommend that ASIC provide guidance to AFSL auditors on the review of PII cover and that they undertake some level of random checking of the adequacy of AFSL audits.
- ASIC should undertake a risk-based investigation of the adequacy of PII cover for a sample of licensees that demonstrate warning signs, such as higher levels of IDR or EDR complaints.
- ASIC should actively review PII as part of advice AFSL surveillance exercises that they undertake for other reasons.

Better enabling PII to be effective for entities in liquidation.

- We recommend that the Government fund the establishment of a "Friend of the CSLR" to take over from liquidators in the management and pursuit of PII claims and other recoveries for firms that are in liquidation. All of the rights of the liquidator should be assigned to them.
- We recommend reforms to ensure that PII cover cannot be cancelled by the insurer when a financial advice licensee is placed into liquidation.
- We recommend a means be found to force parent entities that place an advice subsidiary into liquidation to retain and pay for PII cover for the period whilst the licensee remains a member of AFCA.

PII should work effectively for more than just financial advice

The design of the CSLR places the predominant focus on the financial advice sector, including with respect to how PII works at the financial advice firm level. However, as the Shield and First Guardian matters have demonstrated, issues causing consumer loss are occurring at every step in the financial services value chain. The focus of review of PII effectiveness should include the MISs responsible for these collapses. The relatively small number of complaints made to AFCA about the Responsible Entities of Shield (21 in 2025/26) and First Guardian (82 in 2025/26) have been closed and classified as outside AFCA rules. This is entirely unsatisfactory. **The AFCA rule (C1.5) that allows these complaints to be excluded, needs to change, and the PII of these MISs also needs to play a role in ensuring that clients can be compensated when they are the subject of misconduct and experience loss as a result of product failure.** This problem needs to be looked at from a much broader perspective. We have also argued that AFCA Rule C1.5, being the exclusion of "a complaint relating to the management of a fund or scheme as a whole" needs to be removed to better allow complaints about the operation of superannuation funds. **We further seek a better solution for other responsible parties to contribute to the compensation of clients, including research houses, auditors and others.**

Effectiveness of PII

The objective for PII is an arrangement for compensating retail clients for loss or damage suffered as a result of breaches of the Act, however for a range of reasons, such as exclusions, excesses, limits and expiration, this may not be the outcome in many cases. Nonetheless, PII is an important part of the overall client compensation regime.

Only a relatively small percentage of financial advice licensees have complaints that go to the Australian Financial Complaints Authority (AFCA) in any one year. Based upon AFCA complaints data (the AFCA Datacube) for the 2024/25 year, only 43 licensees, out of over 1,800, had four or more complaints, and of these 11 were in liquidation or administration.

Since the commencement of the CSLR, up to 31 January 2026, compensation payments have been made by the CSLR with respect to 33 financial advice entities. Only Dixon Advisory and United Global Capital have total payments so far of more than $2.5m.

There are a range of reasons why PII might not be effective at the time that it is needed. Exclusions, excesses and the currency of cover are all important factors, however the one that is most relevant to the CSLR is situations where the level of PI insurance is fundamentally inadequate. Recent cases, such as Dixon Advisory, United Global Capital, and those related to the Shield and First Guardian matters highlight that this is most likely to be the case where there is a product failure or a systemic business model style failure. In each case, a huge level of exposure was created, where the mandated maximum level of PI cover ($20m) would never be sufficient. To illustrate this, ASIC's November 2025 Concise Statement in their action against Interprac Financial Planning illustrates how what appears to be a systemic matter involving just two advice practices can create a huge exposure. The Concise Statement explains that "around 6,843 retail clients invested about $677 million in the Funds on the advice of the Authorised Representatives". Given the scale of loss involved in the collapse of Shield and First Guardian, the mandated maximum level of cover of $20m would never have been enough.

In the case of Wealth Trail, which involved multiple client fraud cases, it is understandable that the maximum level of cover may have been exceeded. Thus, where systemic fraud arises, the level of cover is unlikely to be sufficient.

Despite the examples above, we do not believe that forcing all advice licensees to have a substantially larger amount of PII cover is the solution. This will cost significantly more and result in an increase in the fees clients pay for financial advice, which is certainly not in their interests. Further, given that insurers are going to incur costs in providing higher levels of cover and seek to make a profit on the premiums they receive, increased levels of insurance cover that is very rarely needed, will simply lead to leakage of money from the system that will only benefit the insurers.

Inadequate PII Data

We appreciate the opportunity to respond on the issue of PII, however we feel that this is being undertaken in an environment where we lack the information necessary to fully understand the current situation in the market. There is very little information available on premiums, claims (accepted and rejected), reasons for rejection, adequacy of current cover or information on where the PII product is failing the end consumer.

We imagine that there should already be a lot of useful data that exists on the effectiveness of PII, including where it has not worked, such as the cases that have already been paid out by the CSLR. This data is not yet available to relevant stakeholders. **It would be very beneficial if more data was shared publicly on the role that PII has played with respect to the failed firms that have already been subject to CSLR claims.** An investigation of UGC, Wealth Trail and others would provide some very

useful insight. Equally, in terms of the firms that have recently failed as a result of the collapse of Shield and First Guardian, such as MWL, Financial Services Group Australia and Next Generation Advice, we would like to understand what role PII did or will play in the compensation of impacted clients. **We call for this information to be published to assist in the assessment of the effectiveness of PII.**

More broadly, we are calling for better data to be available on the PII market for the financial advice sector. **We would like to see APRA mandate the collection of information on premiums paid, claims made, claims rejected and profitability**. This information, in terms of numbers and dollars, would also assist with the assessment of the effectiveness of PII.

Further, we are aware that ASIC checks the existence of PII when a licensee is initially approved, however does no further checks beyond that time. We understand that information is provided to ASIC as part of the submission of financial statements each year and the AFSL audit process should consider information on the firm's PII cover, however we have no evidence that this data is acted upon. **It is also our view that ASIC has access to important data to enable a risk-based review of the adequacy of PII cover for specific higher risk firms and we recommend changes to enable this**.

Implications for firms in liquidation

One of our primary concerns is with respect to the effectiveness of PII for firms that are in liquidation. We don't know the extent to which liquidators are making claims on PII cover, however we assume that this is less likely. AFCA have released lead cases on the four advice entities involved in the Shield and First Guardian matters who have already gone into liquidation. In each of these four cases, AFCA have made it clear in the determinations that the liquidator has not responded to the complaint. This is, in our view a concerning situation. It might also suggest that they are not notifying the insurer of the receipt of complaints. We can only assume that if they are not responding to AFCA on complaints, then they are also less likely to pursue PII claims. This is disturbing as PII may have been able to play an important role in reducing the impact on the CSLR in these cases. **We recommend that the Government fund the establishment of a "Friend of the CSLR" to manage the pursuit of PII claims for firms that are in liquidation.**

We are also worried that in some cases PII policies lapse when an entity is placed into administration/liquidation, despite having a period of time to run on their existing valid PII policies. **We recommend reforms to ensure that PII cover cannot be cancelled by the insurer when a financial advice licensee is placed into liquidation. We also believe that there should be a mechanism to force parent entities that place advice subsidiaries into liquidation to mandate the requirement to retain PII cover whilst the licensee remains a member of AFCA**.

Implications for financial advisers

Whilst the obligation to hold PII sits with the AFSL, it is usually the case that it is the individual financial advisers who pay for the cost of the PII. In limited cases, such as with respect to salaried advisers, who

are very much a minority, it may be their employer who pays. It is also individual financial advisers who pay the CSLR levies. Thus, financial advisers, our members, have a lot at stake in ensuring that PII cover is as effective as possible and that the CSLR cost is kept to a minimum. Clearly that is currently not the case, and why it is so important to them that the problems are fixed.

Financial advisers, who are authorised by an AFSL, typically have to pay the cost of the PII cover as advised by their licensee. They do not necessarily know how the premium is apportioned, nor the extent to which their licensee applies a premium to cover costs or a margin. They are also in some cases asked to pay for run-off cover when they leave a licensee, including in cases where there is no evidence provided that the run-off cover has actually been purchased. We have concerns about how premiums are applied and how run-off cover charging arrangements work. **We recommend that improved disclosure is necessary and that this model should be subject to some level of oversight in the future, as part of an ASIC PII review.**

FAAA feedback on specific consultation questions

We have responded to each of the consultation questions in the section below.

Requirements for PII:

1. Is the existing regulatory model, consisting of broad legislative obligations and regulatory guidance for PII to be held by licensees, effective in reducing the risk that consumers are not compensated when a licensee has insufficient financial resources to meet claims?

As explained above, we feel that there is a lack of necessary data to confirm if the current regulatory model is effective. We acknowledge that the form of regulation is suboptimal, in that there is a very high level obligation in the Corporations Act to have arrangements for compensating retail clients for loss or damage suffered as a result of breaches of the Corporations Act (Section 912B), and a regulation that requires the licensee to hold PII that is adequate (Regulation 7.6.02AAA), with some explanation of what considerations need to be taken into account in considering adequacy. It is then a Regulatory Guide (RG 126 - Compensation and insurance arrangements for AFS licensees) that specifies what type and level of cover is required. So, the law is vague, and the detail is only defined in a regulatory guide, which is not binding. That presents challenges in ASIC enforcing the requirements. Clearer regulatory requirements would appear to be preferable to the current situation, however we recommend more complete data on the effectiveness of the current arrangements be collected and analysed before a decision is made.

It is our understanding that the type of cover licensees hold typically complies with the expectations of RG 126, however in some limited cases, the level of cover that is required by RG 126 is not being held. The only way that this could be confirmed is if it was being monitored and checked by ASIC (ideally on a targeted sample basis). For this reason, we suggest that any proposal to change the regime should await the results of the first round of ASIC reviews of the adequacy of current cover.

2. If the existing regulatory model is not effective, how could it be amended and what are the costs and benefits?

As stated above, we do not have the data to assess the effectiveness of the existing regulatory model.

There is currently very little oversight of what PII cover is actually in place after an AFSL is originally granted. Whilst we understand that the adequacy of PII is reported as part of the FS 70, and should be considered in the annual AFSL audit, which is reported to ASIC, it is not clear that ASIC takes any action with respect to shortcomings. It is also evident that there is no program of targeted reviews by ASIC that might also highlight weaknesses in the existing regulatory model.

Given how long ago the key elements of the regulatory guidance were set, it may be appropriate to review this, however that should be on the basis of evidence of current effectiveness. We would be interested to know the frequency of cases where the maximum level of cover ($20m) had proven to be insufficient, and if so, the reason. If the data shows that this is common, then there might be a case for changes to these requirements.

There may be grounds to consider a broader range of factors where a higher level of PII cover is required. A careful assessment of the cases where a financial firm has been unable to meet their obligations for client compensation, would help to highlight areas where this should be considered. The examples of Dixon Advisory, United Global Capital and Remi Investment Services are cases with large CSLR exposures, where the primary contributing factor was a business model that demonstrated high levels of inappropriate sales of related party products. Whilst it would be possible to recommend that higher levels of PII cover be required where there is an exposure to higher-risk related party-products, this is unlikely to be effective, as often, PII policies exclude losses from related party products. There could be other mechanisms to address the risk of related party product exposure, however controls to manage this risk would need to be taken into account.

We are unable to respond in terms of costs and benefits.

Regulatory oversight:

3. Is ASIC's initial oversight in granting AFSLs and ACLs effective in ensuring applicants obtain adequate PII cover?
– If not, how could it be changed?

Whilst we do not have access to data to demonstrate this, ad-hoc feedback from the marketplace suggests that the initial oversight of AFSL applications seems reasonable, given the limited nature of the regulatory obligations. However, the cover that a licensee needs at the time of commencement may change over time, as may the activities of the licensee. Risks could increase significantly without the PII cover changing to reflect this.

4. Could ASIC expand its ongoing oversight over PII arrangements, such as through the collection of additional data?
– What additional data could ASIC collect, from which licensees, and how frequently?
– What would ASIC be required to do, in relation to which licensees, and how frequently?
– What would the benefits and costs be?
– Given these benefits and costs, would industry consider there to be merit in increasing industry levies to meet additional ASIC costs?

As part of the AFSL financial statement process (FS 70), licensees are required to respond to a range of questions related to PII, including whether cover is in place, confirmation of the adequacy of the cover, the amount of cover, the level of the excess and whether any claims have been made. Assuming that the information that is reported to ASIC as part of the financial statements process already includes the level of revenue for the business, then we feel that the only important information that is missing in order to demonstrate compliance with RG 126 is policy exclusions. This annual exercise should also be sufficiently frequent. What is evidently missing is any requirement for auditors to review the PII cover and to express a statement on whether in their view it is adequate. We understand that no guidance is provided to auditors to assist them in reviewing the adequacy of the PII cover.

We recommend that ASIC should use the FS 70 reporting and the AFSL audit exercise to investigate cases where the level of cover is significantly less than the requirements in RG126. We also recommend that ASIC provide guidance to the AFSL auditors and do some level of random checking of the adequacy of the AFSL audit process.

In addition to leveraging the AFSL financial statement and audit process, ASIC should expand what it does to oversight the continuing existence and adequacy of PII cover. **ASIC should have a risk-based approach to investigate licensees that may have an increased risk of needing to utilise PII cover.** ASIC already collects IDR data on a six monthly basis. They can also access or observe EDR data from AFCA. **ASIC should, on a risk-based approach, investigate licensees where there are other obvious warning signs, such as exposure to higher risk products or previous regulatory concerns. The intervention should be targeted and proactive.** In a world of artificial intelligence, it is not unreasonable to expect ASIC to undertake analysis to identify higher risk candidates. **ASIC should also actively review PII as part of surveillance exercises that they undertake for other reasons.**

We are not recommending that every year, each licensee should be subject to a detailed review by ASIC, however we would support a risk-based review of a select number of licensees on the basis of early warning indicators.

We are unable to respond in terms of costs and benefits. Whilst we accept that increased monitoring and surveillance of the adequacy of PII cover could result in an increase in the ASIC Funding Levy, we expect that this could be minor if there is usage of artificial intelligence to identify the targets for review and if the number of licensees subject to careful review is limited. It is our view that some increase in oversight of

PII cover, particularly when this would be very targeted, could have a meaningful impact on the cost of the CSLR, and thus justify this increased level of oversight. The cost of oversight of the PII insurers or the auditors, as part of this process, should be charged to the General Insurance and Audit sectors.

PII market:

Market conditions

5. To what extent does the description of the PII market for financial services in Australia presented in this paper reflect the experience of licensees, insurers, and other stakeholders?

The data presented seems to reflect financial services more broadly, rather than financial advice specifically. The description of the current PII Market appears reasonable, although we would suggest that the recent decline in premiums has been more pronounced in the financial advice sector. It is our understanding that PII premiums are often less than the range quoted in the consultation paper of between 2 and 5 per cent of revenue.

When considering the financial advice market, the volume of claims is very cyclical and subject to major market events. Equity market and other investment market crashes have a huge impact on the volume of complaints in following years. The GFC had a very substantial impact on complaints, with a significant decline in investment markets and a large number of specific entity collapses. Some of the specific factors were the use of gearing and the collapse of agri-business products. The impact of the COVID period market collapse was less significant as the market recovered more quickly and there were many fewer entity/product specific collapses. Ad-hoc feedback suggests that the 2017-2019 Banking Royal Commission put a focus on client detriment and may have resulted in an increase in complaints. These factors also influence the appetite for supply in the market, which can create further pressure on pricing. The cyclical nature of the market can also lead to insurers exiting the market, or changing the terms under which PII is offered, which means that there needs to be some ability for flexibility in the requirements.

The next market collapse may have a greater impact on complaint volumes, as compared to COVID. This cyclical nature and market influence is an important consideration. Insurers need to price for the full market cycle, which is highly unpredictable. This can lead to periods of large losses and periods of very high margins. We understand that insurers are doing well at the moment, with claims paid ratios much lower than the long run expectation of the cost of claims being around 60% of premiums.

6. To what extent are licensees able to obtain affordable PII cover that allows them to fulfil their licence obligations?

To the best of our understanding, most businesses are currently able to find appropriate PII cover. There may be some with a poor complaints track record who struggle to obtain adequate cover, however there is very little data on this. Anecdotally, this was more of a problem a few years back.

7. What do insurers consider to be the most important factors in creating and maintaining a stable PII market for financial services in Australia?

Whilst this might be a question best answered by the insurers, we would assume that investment market stability, avoidance of large-scale collapses and avoidance of higher risk business models would all be important. Regulatory interventions and material increases in claim limits (such as those that arose at the time of the establishment of AFCA) are also contributing factors.

Representative networks

8. What changes could be made to PII requirements to enable licensees with a representative network to operate more efficiently and at a lower cost?

Many of the larger licensees run authorised representative networks, where the licensee appoints self-employed advisers and their businesses. The licensees remain responsible for the conduct of these advisers and these licensees are required to operate an Internal Dispute Resolution system, be members of AFCA and hold PII. Licensees seek to manage risks by setting standards for how advisers must operate, establishing Approved Product Lists to control what their advisers can recommend and operate a client file audit regime to check the appropriateness of the advice provided to clients. The fact that they have less control over the conduct of their advisers, as opposed to self licensed and salaried businesses, can make obtaining PII cover more difficult and costly.

Insurers need to price for the risk of cover, and to the extent that different business models reflect different levels of risk, it is reasonable that there will be some variability in the cost of PII. It is up to the insurers to understand the risks in running an advice licensee and to price accordingly. Some advisers have expressed concerns about the capability of the insurers to understand risk adequately. Improved understanding and better underwriting will help to avoid the good businesses subsidising those that are not so well run. We are not aware of any meaningful options to enable these Authorised Representative licensees to operate more efficiently and at a lower cost.

Licensees who operate this model, will typically pay for the insurance and then seek to recover the cost of it from their advisers on some apportionment basis. Individual advisers within these licensees often get very little visibility of the actual cost of the cover and are forced to pay what they are told. Whilst we would accept that it was reasonable for the licensee to add on a small margin to cover the cost of managing the scheme and collecting premiums, we would be concerned if this was a material margin that could not be justified by the cost of managing the program. This might be best addressed by disclosure obligations.

Another area that we have held concerns about over many years is the requirement by some licensees that practices or advisers who leave the business must purchase run-off cover. This has come to prominence recently with one firm connected to the Shield and First Guardian collapses, allegedly requiring their advisers to pay for two years of run-off cover. In our view, it would be important that these funds were used to actually purchase run-off cover, rather than being kept for the licensee's own

purposes. Some argue that these demands for run-off cover are not in fact necessary for a continuing licensee (since the purchased PII cover is for current and previous advisers) and are instead used to prevent advisers from leaving. We think that this is entirely inappropriate. **We recommend that this is an issue that the Government consider, acting to ensure that charging for run off cover can only be applied in limited and reasonable circumstances**. We would further suggest that where this can be forced upon an adviser, it might be indicative of an unfair contract, or a case of a financial firm claiming to provide an insurance service without necessary licensing.

Industry bodies

9. What role could industry bodies play to provide licensees with better access to cost effective and comprehensive PII cover?

– Could industry bodies provide guidelines for minimum PII requirements?

There are important differences between the financial advice profession and lawyers and accountants. The applicability of a Professional Standards Scheme is one important difference. The other is the existence of AFCA and the availability of a no cost ombudsman type scheme, which are applicable in financial advice.

Another important difference is the role that licensees play in the financial advice sector. Whilst financial advice is provided by individual advisers, the responsibility for that advice, and the legal obligations, should it be inappropriate, rests with the licensee. The obligation to be a member of AFCA and to hold PII cover also sits with the licensee. Professional associations in the financial advice sector represent individual advisers and not licensees. Thus, there is a level of disconnect between the PII model and the role of advice professional bodies.

Industry/professional bodies could provide guidelines for minimum PII requirements, however in addition to the inconsistency between the membership of professional bodies and entities responsible for PII, not all advisers are members of professional bodies and this would create complications if the standards differed from the ASIC guidance.

PII policies:

PII minimum requirements

10. To what extent are the minimum requirements outlined in RG 126 appropriate? Does this change for new licensees, small business licensees, and licensees in different sub-sectors?

We are not aware of any information that would suggest that the current minimum standards in RG 126 are inappropriate. Neither are we aware of any particular issues impacting new licensees or small business licensees. As we have stated above, in the context of the publication of additional information or

other evidence to highlight that specific issues exist in the marketplace, then we would be open to investigating sensible reforms to the minimum requirements in RG 126. Potential considerations that we have described above are the adequacy of the current maximum level of cover and exclusions that apply to some lines of business.

11. Are there opportunities to enhance PII through changes to the current PII minimum requirements (such as minimum coverage, scope, exclusions, etc.)? If so, what are they and how would the PII market be likely to respond, noting potential impacts to premiums and excesses?

– Do stakeholders consider such changes would materially reduce financial and sustainability pressures (i.e., reduce claims incidence), including in the event of a future large-scale compensation event?

PII cover for financial advisers is designed to cover misconduct, not investment losses or product failure. PII cover to protect clients in the event of product failure should exist elsewhere in the financial services value chain. **We recommend mandatory requirements exist for other parts of the value chain, specifically in terms of research houses, MISs, and auditors.** This proposal would ensure cover is available where the risk is created, however there would need to be a means of consumers accessing the proceeds of that insurance.

We do not have access to enough information to recommend specific changes to the current PII obligations on advice AFSLs, however, we would support further investigation to assess the merits of the following:

- A review of the $20m maximum and $2m minimum levels of cover where there is evidence to suggest that this has had a detrimental impact on the cost of compensation (PII and CSLR) on a cost benefit basis.
- Consideration of other compensation solutions for financial firms with related party higher risk product issues.
- Specific guidance on what is an appropriate level for policy excesses.
- Further consideration of unreasonable exclusions that might be prevalent.

We are not in a position to recommend any of the above, and certainly not in a position to consider the potential impact of any of these changes, due to the lack of data. However, we note that increasing the obligations for PII will have an impact on premiums and at the extreme, could result in insurers stepping back from the market. The impact on PII product offerings and availability must be carefully considered.

Gap between PII minimum requirements and available PII policies

12. How could any gap between the PII minimum requirements and what is provided for in generally available PII policies be addressed? How would the PII market be likely to respond?

We have heard about some concerning exclusions that occur in the marketplace, however we do not have firm evidence on this. Otherwise, we do not believe that there is any material gap between the PII minimum requirements and the policies that are generally available, other than with respect to the impact of liquidation on policies, as discussed further below.

13. What factors could be considered to distinguish between temporary and permanent changes to PII policy terms?

It is appreciated that the PII market is cyclical and can be impacted by both demand and supply issues. We understand that at times in the market cycle, insurers may seek to pull back on offering cover or seek to vary the terms. It would be important to ensure that the law did not create a problem when the market refused to supply a product that was a mandated requirement. We do not believe that this is currently the case, however it is something that we need to be conscious of and the standard needs to provide flexibility for this to be managed.

PII and external administration:

Impact of external administration on PII

14. To what extent does the impact of external administration on PII policies described in this paper reflect the experience of licensees, insurers, and other stakeholders?

It is evident to us that administrators and liquidators have so far taken little interest in defending claims that are submitted to AFCA. The first four lead cases on Shield and First Guardian, that have been processed and published by AFCA, state that the liquidator did not respond to the complaint or provide information as part of the process. This failure to participate is likely to result in a higher level of compensation being paid from the CSLR. It is also very likely that few liquidators will notify the insurer of complaints received or seek to make a claim under a PII policy.

In the case of Dixon Advisory, where the clients pursued a class action, there was ultimately a settlement with the company and the insurer that allowed the payment of $16m in compensation. As $4m came from E&P Financial Group, this meant that $12m must have come from the insurer. If E&P Financial Group had the maximum level of $20m cover, then this would suggest that this maximum level was reduced by $8m, presumably as a result of legal costs incurred as part of this process and possibly other legal matters. In all senses, this was a very poor outcome in the context that the Dixon Advisory collapse is likely to cost the CSLR as much as $300m.

It is unclear what contribution PII cover has made to the other company collapses that have resulted in payments from the CSLR, however it is assumed that they will have had little if any impact.

The FAAA has previously expressed concerns about the extent to which liquidators have pursued companies, directors and management involved in the collapse of financial firms where CSLR payments eventuate. In the case of Dixon Advisory, all financial advisers and clients were transferred to another company within the E&P Financial Group without any payment. Further, E&P Financial Group sought to void an inter-company loan owed to Dixon Advisory by its parent entity. This was ultimately settled, however evidently not for full value. In another case, Libertas Financial Planning, a subsidiary of Sequoia Financial Group, was placed into receivership in May 2023, with advisers and clients transferred to another advice licensee within the group (Interprac), evidently without any payment. Sequoia also appeared to seek to avoid the repayment of an intercompany loan owed to Libertas by Sequoia through the declaration of a dividend in the year that Libertas was placed into administration. This was highlighted by the FAAA in submissions related to the CSLR on the basis of publicly available information. The liquidator investigated the matter and was initially not inclined to take action. Evidently, they ultimately were involved in a settlement announced by Sequoia in December 2025, that involved the payment of $980,000 to Libertas. We imagine that similar issues exist with many of the other entities that have collapsed and resulted in payments by the CSLR. **We recommend that more oversight of these CSLR insolvency matters is undertaken to ensure that the assets of insolvent firms are preserved and made available for the benefit of creditors, including financial advice clients.**

One important issue with insolvency practitioners is that they are appointed to represent the interest of all creditors, however the pursuit of a specific claim through a PII insurer could result in a claim that is payable in priority to the specific claimant (Corporations Act requirement). This means that they would be incurring costs to pursue a matter that was not in the interests of creditors as a whole, but instead in the interests of specific creditors or claimants – i.e. impacted consumers. This, along with other complications, is likely to present an obstacle in the pursuit of claims by liquidators.

We appreciate that there are a range of challenges faced by receivers and liquidators, including obligations to creditors, lack of funding, high level excesses, inadequate knowledge and limited prospects of success impacting the pursuit of these matters. In our view this is an area that needs to be substantially addressed. It is essential that every effort is made to pursue compensation from the responsible parties and to prevent phoenixing activity. **We have proposed that a Government funded entity, that sits alongside the CSLR, could play this role to pursue every possible avenue for recovery. They should be able to stand in the shoes of the liquidator and have all of the rights of the liquidator to pursue these matters.** This model is similar to the current Fair Entitlements Guarantee (FEG) Recovery Program: https://www.dewr.gov.au/fair-entitlements-guarantee/recovery-program

15. What changes could be made to PII minimum requirements to make PII policies more effective in responding to compensation claims when the licensee is under external administration? For example, aligning with an international standard (FSCS)?

– If the proposed changes were made, how would the PII market be likely to respond?

Whilst it is firstly critical that liquidators pursue PII claims and every other pathway of recovery of assets, it would also be beneficial for other changes to be made. **We recommend the elimination of any terms that allow the policy to be voided when a company goes into administration/liquidation and the introduction of an obligation for a parent entity placing an advice licensee into administration/liquidation to retain PII cover for a period of at least 12 months or longer to cover the duration of its AFCA membership**.

In recommending that PII policies should remain active after a financial firm has been placed into liquidation, we are not proposing that the PII policy should cover insolvency matters. Instead, we are suggesting that they should continue to be active with respect to complaints made by clients in regard to financial advice previously provided.

There are other suggestions that PII policies should have an option for 12 months of run-off cover, to provide protection after a licensee is placed into liquidation. This would cover the financial firm for the period that the licensee must remain a member of AFCA. Whilst we think this is worthy of further investigation, we have three important concerns about this. Firstly, for a business that is placed into liquidation, we are not sure where the funding would come from (unless there is a parent entity that could be forced to pay). Secondly, we are unsure what impact mandating this obligation would have on the ongoing cost of PII and the availability of cover. Thirdly, we would want to have confidence that the liquidator, or a friend of the CSLR, would actually proactively pursue claims against the PII policy. We believe that this is worthy of further consideration, although it clearly has complications.

CSLR recovery from licensees under external administration or PII insurers

16. What changes could be made, if any, to enable the CSLR to more effectively recover from a licensee under external administration or their PII insurer, the costs of compensation and AFCA complaint handling fees the scheme has paid out on behalf of the licensee?

– If the proposed changes were made, how would the PII market be likely to respond?

As discussed above, it appears that the PII problems mostly arise when a financial firm is placed into administration/liquidation. Administrators/liquidators do not have the incentive or capability to proactively defend claims that go to AFCA or to aggressively pursue PII claims. It is not clear to us that they are even notifying the PII insurer when a complaint is received.

In our view, the best way to address this is to facilitate the provision of rights to the CSLR or another body that is appointed to act on behalf of the CSLR (previously described as "Friend of CSLR") to defend cases submitted to AFCA, to pursue recovery from PII Insurers and to otherwise promote all possible activity to maximise the recoveries from all potential sources to support compensation for impacted consumers. Every step should be made to ensure that this Friend of

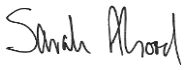
CSLR had the rights that they need to pursue these recoveries. Evidently this is a problem at present, with the CSLR's subrogation rights being inadequate. This is seemingly evident by the very low level of recoveries that have been reflected in the cost estimates issued by the CSLR.

Conclusion

The FAAA welcomes the opportunity to provide feedback on the PII consultation. Whilst our feedback does not suggest substantial changes to the current PII regime, we have identified a number of options to maximise recoveries and to minimise the cost to the CSLR to improve outcomes for impacted clients.

If you have any questions about our submission, please do not hesitate to contact me on (02) 9220 4500 or sarah.abood@faaa.au.

Yours sincerely,



Sarah Abood
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