

## **Joint statement on Treasury's consultation package on Shield and First Guardian**

The Joint Associations Working Group (JAWG) welcomes Treasury's consultation package responding to the collapse of Shield and First Guardian,

We note the significant consumer harm and loss of confidence these events have caused across the financial services sector.

The consultation package appropriately recognises that the circumstances surrounding Shield and First Guardian raise a range of interconnected policy issues spanning fund design and governance, distribution practices, licensee and investment governance, compensation arrangements and regulatory oversight.

While the associations represented by the JAWG have taken different individual positions on certain proposals contained in the package, JAWG wishes to draw Treasury's attention to the policy proposals that have consensus across our organisations.

The JAWG also wishes to draw Treasury's attention to proposals which have consensus opposition. The JAWG considers that these proposals are not targeted and proportionate to addressing consumer harm, and are outweighed by the unnecessary regulatory burden, additional regulatory complexity, and the significant negative impact on Australians' access to financial advice.

As a general principle, the JAWG considers that the priority of any reform response should be to address genuine gaps or weaknesses in the regulatory framework, rather than introduce duplicative obligations where equivalent requirements already exist. Effective oversight and enforcement by ASIC and APRA remain critical to ensuring existing legal obligations and consumer protections operate as intended. At the same time, the JAWG recognises that the events surrounding Shield and First Guardian have highlighted areas where targeted reform is warranted and, in those areas, we are pleased to express our collective support.

### **Reform options to support the ongoing sustainability of the CSLR**

The JAWG supports several of the reforms proposed in Treasury's consultation paper that would better align the CSLR with its original policy intent as a scheme of last resort and improve the scheme's long-term sustainability.

In particular, the JAWG strongly supports limiting CSLR compensation to capital losses only. It is not consistent with the concept of a scheme of last resort to compensate consumers for hypothetical investment returns, particularly where those amounts are ultimately funded by levy-paying entities that had no involvement in the underlying misconduct.

While this measure is likely to bring the most meaningful reform to support the sustainability of the scheme, the JAWG is also pleased to support a number of other reforms contained in the consultation paper, including:

- enabling the CSLR to deduct relevant offsets from compensation payments, including amounts recovered through external dispute resolution processes, insolvency proceedings, insurance arrangements and other sources of redress;
- expanding the CSLR's subrogation and recovery rights to improve the prospects of funds being returned to the scheme, helping to reduce the burden ultimately borne by levy-paying entities; and
- Treasury further exploring mechanisms to improve the recovery of unpaid AFCA determinations within corporate groups and related entities. Given the complexity of these issues and the potential interaction with existing corporate and insolvency law frameworks, the JAWG considers that further consultation and targeted policy development is warranted before any reforms are progressed.

Given its role in setting, maintaining and enforcing the regulatory framework, the JAWG also believes the Government should share some responsibility for funding the foreseeable CSLR special levies.

Finally, while not directly addressed in the consultation package, the JAWG is concerned with the high proportion of CSLR costs attributable to AFCA fees. Based on the CSLR's FY27 initial estimate, AFCA fees are expected to represent \$20m or 15% of the total levy borne by industry. The JAWG encourages Treasury to explore opportunities to improve the efficiency of the external dispute resolution system and identify measures that could reduce unnecessary costs while maintaining access to effective consumer redress.

### **Enhancing Consumer Protections in Superannuation**

The JAWG opposes the proposal to introduce mandatory waiting periods when changing superannuation funds. These measures would introduce significant friction, cost and operational complexity into the advice process while doing little to address the underlying causes of the harms identified in recent cases. Indeed, the lead AFCA determinations with respect to Shield and First Guardian show customers were often courted by lead generators over months, and therefore waiting periods would not necessarily have stopped the harm.

We also envisage unscrupulous operators will simply adjust their sales scripts and tactics to account for a mandatory waiting period.

The JAWG also strongly opposes the proposal to prohibit advice fee deductions for switching-related advice. Assessing whether a member's existing superannuation

arrangement remains appropriate, having regard to their objectives, financial circumstances and needs is a fundamental component of comprehensive personal financial advice and good consumer outcomes. Measures that effectively discourage advisers from providing switching-related advice risk undermining access to financial advice and limiting consumers' ability to receive professional guidance on one of their most significant financial assets.

Financial advisers are already subject to extensive obligations, including the duty to act in the client's best interests (s961B of the Corporations Act) and provide advice that is appropriate to the client's circumstances (s961G). Therefore, the JAWG considers that Treasury's focus should be on identifying and enforcing the law where misconduct has occurred rather than imposing additional process requirements that apply equally to compliant advisers and consumers.

The JAWG is also concerned about potential negative impacts to member choice and competition under this proposal, both of which are important principles underpinning good consumer outcomes within our system. The proposal would have the effect of reducing access to advice, especially for members who have the least ability to pay for it from non-superannuation savings. There is therefore a risk that members become 'stuck' in underperforming funds with poor service or they act on unregulated 'advice' to switch to a different fund.

### **Curbing lead generation activity**

Finally, the JAWG wishes to note our joint opposition to removing or restricting the existing exemption from the hawking prohibition where personal advice is provided.

Removing or restricting the exemption would introduce friction and legal uncertainty into legitimate advice conversations, potentially discouraging advisers from raising related issues that are relevant to a client's financial wellbeing. It will also increase compliance costs without addressing the root causes of the misconduct observed in Shield and First Guardian. For example, a client may initially seek superannuation advice but then broader needs across insurance, retirement planning or investments are subsequently identified and addressed. Restricting the exemption would interfere with these legitimate interactions and risk placing advisers in tension with their existing obligations.

As outlined above, financial advisers are already subject to a comprehensive suite of statutory obligations relating to advice delivery, including broader licensee obligations under the Corporations Act. The failures observed in Shield and First Guardian were not the result of a deficiency in the personal advice exemption itself, but rather instances of non-compliance with existing legislative obligations, together with broader issues relating to supervision by the AFS licensee and regulatory enforcement. Therefore, removing or narrowing the exemption would be a disproportionate response that risks

limiting access to legitimate financial advice while doing little to prevent the misconduct that Treasury is seeking to address.

### **Next steps**

The JAWG encourages the Government to progress, as a matter of priority, those reform proposals that have attracted broad industry support across the consultation package. These areas of alignment represent practical opportunities to strengthen consumer protections, improve regulatory outcomes, reduce the costs of the CSLR, support sustainability and enhance confidence in the financial services system.

The JAWG recognise that the consultation package raises a number of complex policy issues that warrant further consideration and engagement with industry. In relation to proposals not addressed in this joint statement, each association has separately made its own submission reflecting the views and priorities of its respective membership.

### **ABOUT JAWG**

JAWG is a coalition of industry and professional bodies representing financial advisers, stockbrokers, accountants, superannuation trustees and investors with the goal of making advice more affordable and accessible for consumers. Its members for this submission are:

- Boutique Financial Planning Principals Association Inc. (BFP)
- Chartered Accountants Australia and New Zealand (CA ANZ)
- CPA Australia
- Financial Advice Association of Australia (FAAA)
- Financial Services Council (FSC)
- Institute of Public Accountants (IPA)
- Licensee Leadership Forum (LLF)
- Self Managed Super Fund Association (SMSFA)
- Stockbrokers and Investment Advisers Association (SIAA)
- The Advisers Association Ltd (TAA)