



8 February 2019

Adam Bogiatzis  
Consumer and Corporations Policy Division  
The Treasury  
Langton Crescent  
Parkes ACT 2600

Email: [ASICFunding@treasury.gov.au](mailto:ASICFunding@treasury.gov.au)

Dear Ms Bogiatzis

**RE: ASIC Industry Funding Model and Registry Search Fees**

The Financial Planning Association of Australia (FPA) welcomes the opportunity to provide feedback in response to the draft Treasury Laws Amendment (ASIC Cost Recovery and Fees) Regulations 2019.

The FPA's comments are restricted to Schedule 1 – Supervisory cost recovery levy, the proposed new sub-sector to enable ASIC to recover its regulatory costs incurred from its close and continuous monitoring of Australia's largest institutions – as announced by the Government on 7 August 2018.

The specific ASIC action referred to in the then Minister's media release, and subsequent announcements by the Regulator include:

- \$26.2 million to accelerate and increase the intensity of ASIC's enforcement activities and enhance its capacity to pursue actions for serious misconduct against well-funded litigants, through the Enforcement Special Account;
- \$8 million to implement a new supervisory approach in respect of Australia's five largest financial institutions (the big four banks and AMP) by, for the first time, embedding dedicated staff within these institutions to monitor governance and compliance actions;
- \$6.8 million to establish a dedicated taskforce which will conduct a proactive, targeted and thematic review into corporate governance to identify and pursue failings in large listed companies, including deploying staff to conduct new on-site surveillance and investigations.

Section 72B of Schedule 1 of the draft amendment includes the following criteria for the entities subject to close and continuous monitoring by ASIC:

- a) the total value of deposits held on 1 July 2018 in deposit products issued by the entity is at least \$100,000,000,000; or
- b) there are at least 1,000 relevant providers that are, on 1 July 2018
  - i. registered on the Register of Relevant Providers; and
  - ii. authorised to provide personal advice to retail clients on behalf of the entity.

The FPA notes there are two separate criteria for the new sub-sector, intended to ensure the target entities are captured. However, we are concerned that the criteria is set too high and could be avoided by those entities subject to this extra type of regulatory oversight.

As demonstrated in the following industry overview, this criteria may not capture those organisations most likely to be subject to this extra ASIC action.

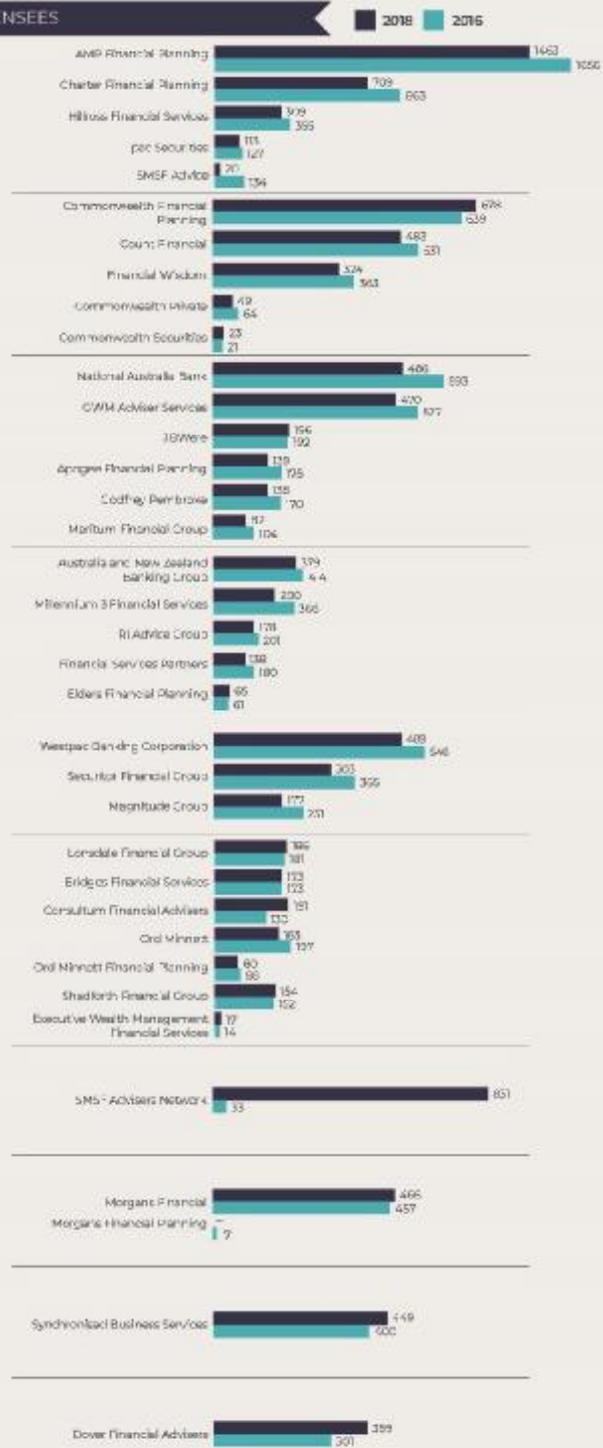


TOP 10

LICENSEE OWNERS



LICENSEES



SOURCE: ADVISIR RATINGS



As at June 2018, only one licensee met the criteria of 1,000 relevant providers. This is partly due to the structure of the industry where it is very common for large institutions to hold multiple AFSLs all reporting into the parent company of the group.

Similarly, the alternate criteria of holding a total value of deposits of at least \$100,000,000,000, may capture some parent companies but not all.

For example, based on the data above, while the Commonwealth Bank may have a total of 1,557 advisers, this advice is provided under 5 separate licensees. While the Commonwealth Bank may meet the criteria of holding a total value of deposits of at least \$100,000,000,000, the licensees within the Commonwealth Bank group would not. There may also be some entities in the future, subject to this new additional ASIC activity that will not meet either criteria.

This can be demonstrated by ASIC's Wealth Management Project which focused on the standard of advice and remediation programs of the largest financial advice firms. The licensees included as part of the review were:

- AMP: AMP Financial Planning Pty Limited and Charter Financial Planning Limited;
- ANZ: Millennium 3 Financial Planning Pty Ltd and ANZ Financial Planning;
- CBA: Count Financial Limited and Commonwealth Financial Planning Limited;
- NAB: GWM Adviser Services Limited and NAB Financial Planning;
- Westpac: Securitor Financial Group Ltd and Westpac Financial Planning.
- Macquarie

The FPA is concerned about the application of draft s72B and whether the intended entities will or will not be captured under this criteria.

The FPA suggests the criteria for the sub-sector for entities subject to 'close and continuous monitoring by ASIC' be clear to ensure it captures those subject to this activity, without inadvertently applying to entities who are not imposed with this extra regulatory oversight. Otherwise there is a risk that any shortfall in cost recovery will fall back on the entire industry, and that small licensees in particular will bear the unintended consequences.

The FPA suggests amending the sub-sector criteria in draft 72B to ensure the Regulations achieve the policy intent. This could be done in several ways. For example:

1. Set the sub-sector criteria as "those entities subject to the specific activity under ASIC's close and continuous monitoring project";
2. Specifically name those institutions to be subject to this additional and specific ASIC monitoring; or
3. Amend the relevant adviser number criteria to ensure it is placed on the primary licensee, that is the parent company, or reduce the criteria to "at least 250 relevant providers that are registered on the Register of Relevant Providers and authorised to provide personal advice to retail clients on behalf of the entity".

The FPA notes that \$26.2 million of the announced additional funding will be allocated to the Enforcement Special Account (ESA) which under the current legal framework is recovered via the industry levy of each sector. We note that ASIC's Wealth Management Project which focused on the standard of advice and remediation programs of the largest financial advice firms (specifically the four



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major banks, Macquarie and AMP) was funded through appropriation of the ESA. The cost of the WMP was recovered via the levy imposed on all financial advice entities rather than just those institutions directly involved. According to the 2018 ASIC Financial Statement, the ESA costs recovered totaled \$29,355,000.

The FPA welcomes the introduction of the new sub-sector to ensure only those subject to the specific additional ASIC regulatory oversight as announced by the then Minister on 8 August 2018, will incur the costs involved. We would encourage the government to adopt a similar approach in the future for the cost recovery of any new ASIC regulatory projects targeting specific entities.

The FPA would welcome the opportunity to discuss with Treasury and ASIC the issues raised in our submission.

If you have any questions, please contact FPA's Policy Manager, Heather McEvoy ([heather.mcevoy@fpa.com.au](mailto:heather.mcevoy@fpa.com.au)), or myself ([ben.marshan@fpa.com.au](mailto:ben.marshan@fpa.com.au)) on 02 9220 4500.

Yours sincerely

**Ben Marshan**

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Financial Planning Association of Australia<sup>1</sup>

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<sup>1</sup> The Financial Planning Association (FPA) has more than 14,000 members and affiliates of whom 11,000 are practicing financial planners and more than 5,720 CFP professionals. 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 FOFA.
- We have an independent conduct review panel, Chaired by Graham McDonald, dealing with investigations and complaints against our members for breaches of our professional rules.
- 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. This is being exported to 26-member countries and the more than 175,570 CFP practitioners that make up the FPSB globally.
- We have built a curriculum with 18 Australian Universities for degrees in financial planning. Since 1st July 2013 all new members of the FPA have been required to hold, or be working towards, as a minimum, an approved undergraduate degree.
- CFP certification is the pre-eminent certification in financial planning globally. The educational requirements and standards to attain CFP standing are equal to other professional bodies, e.g. CPA Australia.
- We are recognised as a professional body by the Tax Practitioners Board.