4 November 2022

Senior Adviser
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600

Email: ASICIFMReview@treasury.gov.au

Dear Sir/Madam,

SMSF ASSOCIATION SUBMISSION – ASIC INDUSTRY FUNDING REVIEW

The SMSF Association welcomes the opportunity to provide this submission in response to Treasury's review of the Australian Securities and Investments Commission (ASIC) Industry Funding Model. Our primary concerns are that the operation of the current model is not reasonable or equitable for all financial advice industry participants.

Members of the SMSF Association come from a range of professions that advise on SMSFs or provide essential services to SMSFs and SMSF trustees. Financial advisers represent around 38% of our membership and accountants 44%. Of the accounting population some 20.6% are licenced to provide SMSF advice.

It is important to note that not all financial advisers provide comprehensive, full service financial advice services. Consideration must also be given to accountants who are authorised to provide SMSF and certain superannuation advice under an accountant's limited licences. They are currently included within this single cohort of financial advisers.

Authorisation to provide advice under the accountants limited licence model occurs in several ways:

1. The firm holds its own accountants limited licence. Nominated accountants within their firm are authorised representatives under that licence.
2. The accountant is authorised under a third party limited licence or
3. They are authorised under a third party AFSL. The AFSL has a comprehensive authorisation. However, a limited authority is provided to the accountant that mirrors the accountants limited licenced.

For this population of 'advisers', financial advisory services are not their core business. Licensing has been necessary for the continued provision of certain advice in a compliant matter. That advice forms part of the essential services provided to the SMSF clients of their accounting firm or SMSF administration business. The fees received from these 'advice' activities represent a very small portion of their total fee revenue.

Feedback from our members highlights that for many in this segment, this component of their business is not profitable and operates at a loss. This is due to the significant costs incurred for this segment of their business, including the need to operate a separate business structure and the duplication of a range of costs. When we look at the current ASIC levy model for financial advisers, accountants under a limited licence or limited authorisation are levied at the same rate as a full comprehensive, full service financial adviser. For many, these excessive costs have caused them to cease their licence or authorisation arrangements. As a result, we have seen a significant decline in accountants as 'financial advisers'. Those that remain do so despite the cost to their business as the risk of not being licenced or authorised is far greater. This is clearly not sustainable, and we expect to see accountants continue to exit financial advice. The result is the further reduction in accessible and affordable advice for consumers, issues currently being considered in the Quality of Advice Review.

Broadly, the financial adviser levy and cost recovery model has not been well explained to licenced accountants, either by ASIC and, in some cases, their third party licencees.

The services provided by accountants under a limited licence do not include advice on the acquisition or disposal of financial products other than an SMSF. It is expressly limited to financial advice about:

- self-managed superannuation funds (SMSFs)
- a client's existing superannuation holdings, to the extent required for making a recommendation to establish an SMSF or providing advice to a client on contributions or pensions under a superannuation product
- arranging to deal in an interest in an SMSF[1]

Subject to their authorisation, this may also extend to 'class of product advice' about:

- superannuation products
- securities
- simple managed investment schemes
- general insurance products
- life risk insurance products
- basic deposit products[2]

Many accountants have chosen to exclude 'class of product advice.'

Since the Royal Commission, we have seen a significant shift in the financial services and financial advice landscape. Financial advice businesses are strongly represented by small businesses. This can have a disproportionate effect where compliance activities relate to large sector participants such as financial institutions or large financial services business.

We would welcome the introduction of tiers within the financial advice pool, that recognises the significant variances in the size of the businesses within the sector and the types of authorisations held.

[1] ASIC, 'Limited AFS Licencees', [n.d.] online, https://asic.gov.au/for-finance-professionals/afs-licencees/limited-afs-licencees/
[2] Ibid

In addition, consideration should also be given to the introduction of a user pays system. The recent changes made to the Australian Financial Complaints Authority (AFCA) provide one such example where this type of modelling has been adopted. Equity and fairness are parament. A model of this kind should be considered over and above one that would see the cross subsidisation of a broader range of sectors, mixing corporates and small businesses together.

The costs incurred in relation to unlicenced or unregulated activities should not be imposed on the respective regulated sector. These types of compliance activities relate directly to ASIC's consumer protection mandate. Similarly, consumer education activities relate to this same objective. These activities should be funded by Government.

We would encourage ASIC to approach all activities through a commercial lens, ensuring that the type, level and number of resources applied to an activity are necessary and appropriate.

Finally, we would support an independent review of the methodologies and processes used to classify and allocate costs across the various sectors and subsectors. Due to its nature and complexity, such a review should be completed by the Australian National Audit Office. This will enable Treasury to set out a clear plan for the implementation of the resulting recommendations and reforms.

Given the current state of the industry funding model and the cross sectoral issues, we are very concerned about how the cost recovery mechanisms of the proposed compensation scheme of last resort will operate. Noting that:

- It will be funded under a model that mirrors the ASIC cost recovery model
- Significant costs were forecasted for its operation in the original consultation paper issued under the previous Government
- The unquantifiable contingent liabilities that will exist for advisers
- Advisers will be exposed to two unpredictable, floating levies
- Currently advisers cannot predict or comfortably budget for their levy due to the significant and sustained increases, its unpredictability, and significant variances from budgeted to actual costs.

If you have any questions about our submission, please do not hesitate to contact us, and we thank you again for the opportunity to provide this submission.

Yours sincerely,

John L Maroney

John Maroney
CEO
SMSF Association

ABOUT THE SMSF ASSOCIATION

The SMSF Association is the peak body representing the self-managed superannuation fund (SMSF) sector which is comprised of over 1.1 million SMSF members and a diverse range of financial professionals. The SMSF Association continues to build integrity through professional and education standards for practitioners who service the SMSF sector. The SMSF Association consists of professional members, principally accountants, auditors, lawyers, financial advisers, tax professionals and actuaries. Additionally, the SMSF Association represents SMSF trustee members and provides them with access to independent education materials to assist them in the running of their SMSF.