Association of Financial Advisers Ltd
ACN: 008 619 921
ABN: 29 008 921
PO Box Q279
Queen Victoria Building NSW 1230
T 02 9267 4003 F 02 9267 5003
Member Freecall: 1800 656 009
www.afa.asn.au

Australian Securities and Investments Commission
Level 5, 100 Market Street
Sydney, NSW, 2000

By email: policy.submissions@asic.gov.au

1 November 2017

Dear ASIC,

AFA Submission – Cost Recovery Implementation Statement

The Association of Financial Advisers Limited (**AFA**) has served the financial advice industry for over 70 years. Our objective is to achieve *Great Advice for More Australians* and we do this through:

- advocating for appropriate policy settings for financial advice
- enforcing a Code of Ethical Conduct
- investing in consumer-based research
- developing professional development pathways for financial advisers
- connecting key stakeholders within the financial advice community
- educating consumers around the importance of financial advice

The Board of the AFA is elected by the Membership and all Directors are required to be practicing financial advisers. This ensures that the policy positions taken by the AFA are framed with practical, workable outcomes in mind, but are also aligned to achieving our vision of having the quality of relationships shared between advisers and their clients understood and valued throughout society. This will play a vital role in helping Australians reach their potential through building, managing and protecting wealth.

Introduction

The AFA supports the underlying basic principle of the industry paying for the cost of regulatory oversight, although we continue to have concern with respect to the application of some of these measures and the impact of the fixed levy on the cost structure of small licensees. This additional cost, along with other recent and expected increases will make it more costly to provide financial advice, which means that either these costs need to be passed on to clients or less businesses will be in operation. In addition, it is important that these measures can be done in an administrative straight forward manner that provides the right incentives for the financial advice profession to deliver quality financial advice. We believe that it should be on a genuinely user pays basis, as opposed to the proposed model where those who do the right thing, subsidise those who do the wrong thing. It is noted from Table 50 on page 94, that of the total $26m being spent on licensees that provide personal advice to retail clients, a total of $12.2m (46.7%) is being spent on surveillance and enforcement. When what would appear to be fixed costs such as "Governance, central strategy and policy, and central legal functions", IT support, Operations support, Property and corporate services and capital expenditure are excluded, this increases to 89.7% of the variable cost. Clearly the vast majority of costs for licensees providing personal advice to retail clients is driven by those licensees doing the wrong thing, yet this cost is being subsidised across all licensees and all financial advisers. We would like to see more visibility on the cost of major remediation/enforcement programs that ASIC is undertaking.

In our submission we have focussed our feedback on the levies that apply to financial advisers and financial advice licensees. This includes peripheral activities that might apply.

Focus Upon Education

We note from Table 50 on page 94 that a total of $14,000 out of $26m is being spent on Education. As stated above, this compares with $12.2m that is being spent on Surveillance and Enforcement. Even when you add up Education, Guidance and Policy advice, it still only comes to $400k.

From the AFA's perspective we believe that "prevention is better than cure" and that the balance should be much more in favour of teaching licensees the right way to operate and encouraging the financial advice profession to operate in a compliant and effective manner rather than spending all the money on dealing with the consequences of poorly run licensees and poor advice. This is not to say that money should not be spent on surveillance and enforcement, as it obviously should, however there may be room to get a better balance on education and prevention.

Financial Capability Work

Table 50 on page 94 states that a total of $1.1m is being spent on Financial capability work for licensees providing personal advice to retail clients. It is not apparent to us that Financial capability work has been defined or explained in the CRIS. We note that this cost does apply in other areas of CRIS. This activity should be clearly defined and explained.

Implication Issues for Financial Advice Licensees

The invoicing model poses a number of complications for licensees running an Authorised Representative model. The invoices will be sent to licensees, in the first case in January 2019, for the 2017/18 year. As the invoices will be based upon the number of advisers with that licensee as at 30 June 2018, licensees will not be able to progressively collect this money through the year and will also be exposed when advisers leave the licensee between the end of the financial year and when the invoice is issued.

It is common for licensees to collect fees from authorised representatives on a monthly basis so that the impact is evened out across the year and so that the exposure to business departures and failures is minimised. Unfortunately, this ASIC funding model is very difficult for licensees, as there is a lack of certainty and obvious complications will exist with the ability to collect the funds over time. From a licensee perspective, for many it would be a much better outcome if the levy was a fixed amount per adviser and capable of being collected on a monthly basis.

Inconsistency in the Number of Financial Advice Licensees

We note that Table 54 on page 99 states that there are 2,895 licensees who provide personal advice to retail clients. An analysis of the October 2017 version of the Financial Adviser Register indicates that only 1,674 licensees have financial advisers recorded on the register. This suggests that ASIC has 1,221 licensees on their AFSL register who are licensed to give personal advice to retail clients, yet have no one on the Financial Adviser Register capable of doing so. No doubt there are a number of explanations for this, including robo advice firms.

We note that digital advice providers will be assessed on the basis of having only one representative. As this is likely to be a rapidly growing segment, we believe that this needs to be reviewed on a regular basis. It is important that a level playing field is maintained and digital advice providers are not given an unfair advantage over traditional advice providers.

It is unclear from the CRIS, when the fixed levy of $1,500 per licensee is calculated or whether it might be possible to avoid it if the licensee had no authorised advisers for the entirety of the 2017/18 year. Potentially, if all of these 1,221 licensees were no longer required to pay the $1,500 fixed levy, then there would be a shortfall of $1.8m. This potential shortfall would no doubt need to be addressed either by forcing up the fixed licensee levy or the variable per adviser levy. We are concerned about the inevitable cost pressure that this will place on financial advice businesses. Such cost increases need to be passed on to clients in the long run, which increases the cost of advice and reduces access and affordability.

Treatment of licensees Providing Advice on Consumer Credit Insurance

We note from Table 54 on page 99, that licensees that provide personal advice to retail clients on products that are not relevant financial products will pay a single levy of approximately $760 per year and licensees that provide general advice only will be charged a flat levy of less than $2,200 per year. We further note that Consumer Credit Insurance is classified as not being a relevant financial product. In the context of the issues raised by ASIC about insurance sold by caryard intermediaries, we very much question why the levies for this segment of licensees would be so much less than what applies to licensees providing personal advice to retail clients. This is particularly the case given that there are so many caryard intermediaries (ASIC Report 471 indicates at least 5,900 authorised representatives).

Other Categories Impacting Financial Advice

Entities providing financial advice may also be caught by other categories such as credit related activity, Securities dealers, MDA services and being an Insurance distributor. The AFA is concerned about the potential for duplication in the levies applied and the lack of clarity with respect to the application of some of these other levies.

We are uncertain based upon the description in CRIS and the number of impacted entities (197) noted in Table 25 on page 59, as to whether financial advisers who provide MDA services are caught by this levy. A review of the Financial Advisers Register as at October 2017 indicate that there are 109 licensees with financial advisers who are authorised to provide MDA services. The Financial Advisers Register also indicates that there are a total of 1,168 financial advisers authorised to provide MDA services. We note that there are also a number of licensees who have operated on the limited MDA exemption, and it is unclear how they will be impacted when they need to obtain a license authorisation. We recommend that the MDA Levy apply only to MDA product providers and not MDA advisers. It would be preferable if the application of this section was more clearly expressed. Despite the comment about administrative cost and complexity, we question the flat fee approach for MDA providers given that operators in this space can be very different with some small operators limiting their activity to running a limited number of MDA client accounts. The regulatory oversight of this group is much less than those with a large number of clients and complex product arrangements. We question the appropriateness of treating this on a fixed levy basis.

With respect to Insurance product distributors, we note that this is not very well understood amongst licensees. This flat levy applies to all licensees who have dealing in insurance products on their AFSL. From our perspective, this seems to duplicate the levy paid by financial advisers, as the vast majority of licensees who are licensed to advise on insurance products will also be licensed to deal in insurance products. There is little point in being able to advise clients on life insurance products if you are unable to assist them to implement the recommendation. Why is there a levy for dealing in insurance products when there is no such levy for dealing in superannuation or investment products? There is a need for this to be better explained or the duplication removed. We also question the use of the term "Insurance product distributors" in the context of financial advice licensees. Financial advisers provide advice, not distribute product.

Concluding Remarks

The AFA welcomes the opportunity to provide feedback on the Cost Recovery Implementation Statement. We have focussed our feedback on the levies that apply to financial advisers and financial advice licensees. We appreciate the challenges in putting such a cost allocation model together, and suggest that this is largely well constructed. We remain, however, concerned that the balance in terms of the spend on education versus remediation could be enhanced and that more could be done to allocate the cost of enforcement activity to those driving the cost of this activity. We also seek further clarity on the application of other levies such as Insurance Product distributors and MDA Services that might apply to financial advice businesses.

The AFA welcomes the opportunity to contribute to this consultation process. Should ASIC require any further clarification on anything in this submission then, please contact us on (02) 9267 4003.

Yours sincerely,

Phil Anderson
General Manager Policy and Professionalism
Association of Financial Advisers Ltd