



FINANCIAL PLANNING
ASSOCIATION *of* AUSTRALIA

3 February 2022

Senator Paul Scarr
Chair
Senate Economics Legislation Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

Email: economics.sen@aph.gov.au

Dear Senator Scarr,

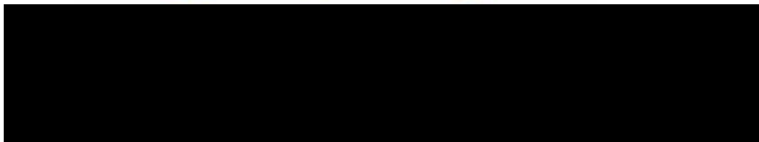
Response to Question on Notice

On behalf of the Financial Planning Association of Australia (FPA), may I express our appreciation for the opportunity to appear before the Senate Economic Legislation Committee's Inquiry into the *Financial Accountability Regime Bill 2021 [Provisions]* and *Financial Services Compensation Scheme of Last Resort Levy Bill 2021 [Provisions]* and related bills.

During my appearance on Thursday, 27 January 2021 the I undertook to provide an answer to a question taken on notice during the hearing.

Accordingly, please find attached the FPA response to the Committee.

Yours sincerely,



Brad Vermeer
Senior Manager, Government Relations and Policy
Financial Planning Association of Australia



SENATE ECONOMICS LEGISLATION COMMITTEE

Response to question taken on notice

CHAIR: *“You made mention of government statements of policy with respect to the scope of the CSLR.”*

“Where was this articulation made, with respect to the scope of the CSLR, that created an expectation in your mind that it was going to cover areas such as the managed investment scheme?”

The Financial Planning Association of Australia (FPA) cites the following examples of indications from the Government that the Compensation Scheme of Last Resort they would establish, would have a broader scope than the current proposition.

1. Restoring Trust in Australia’s Financial System

The Government response to the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry¹

a. Foreword²

by the Hon. Josh Frydenberg MP, Treasurer

*“For the first time **the Government will establish a compensation scheme of last resort to ensure that consumers can have their case heard and be confident that where compensation is owed it will be paid.** This will be a scheme paid for by industry reflecting their obligation to right their wrongs.”*

**Emphasis added*

b. Recommendation 7.1³

Government Response

*“The Government agrees to establish an industry-funded, forward-looking compensation scheme of last resort (CSLR). The scheme will be designed consistently with the recommendations of the Supplementary Final Report of the Review of the financial system external dispute resolution framework (Ramsay Review) **and will extend beyond disputes in relation to personal financial advice failures.**”*

¹ Government Response: <https://treasury.gov.au/sites/default/files/2019-03/FSRC-Government-Response-1.pdf>.

² Page 1: <https://treasury.gov.au/sites/default/files/2019-03/FSRC-Government-Response-1.pdf>.

³ Page 36: <https://treasury.gov.au/sites/default/files/2019-03/FSRC-Government-Response-1.pdf>.

For there to be confidence in the financial system's dispute resolution framework, **it is important that where consumers and small businesses have suffered detriment due to failures by financial firms to meet their obligations, compensation that is awarded is actually paid.** The CSLR **will operate as a last resort mechanism to pay out compensation owed to consumers and small businesses that receive a court or tribunal decision in their favour or a determination from AFCA, but are unable to get the compensation owed by the financial firm — for example, because the firm has become insolvent.**"

*Emphasis added

2. Implementing Royal Commission Recommendation 7.1 – Establishing a Compensation Scheme of Last Resort

*Discussion Paper, December 2019*⁴

a. Foreword⁵

The Treasury

"The CSLR will be industry-funded, operated by AFCA, **extend beyond personal advice failures** and have design features consistent with the recommendations of the Ramsay Review."

*Emphasis added

b. Government Response⁶

The Treasury

"Specifically, the Government's response to the Royal Commission, and Government's Implementation Roadmap committed to:"

"- **Extending the scheme beyond personal advice failure,**"

*Emphasis added

c. Unpaid determination⁷

The Treasury

The Ramsay Review found the activity contributing the largest share of unpaid determinations was financial advice. Recent data provided by AFCA also indicated the highest contributor to unpaid determinations was financial advice (based on value of determinations), **with a significant portion arising from investments (such as managed investment schemes)** and a lower portion arising from the provision of credit.

*Emphasis added

⁴ Discussion Paper: https://treasury.gov.au/sites/default/files/2019-12/191220_cslr_discussion_paper.pdf.

⁵ Page 2: https://treasury.gov.au/sites/default/files/2019-12/191220_cslr_discussion_paper.pdf.

⁶ Page 4: https://treasury.gov.au/sites/default/files/2019-12/191220_cslr_discussion_paper.pdf.

⁷ Page 4: https://treasury.gov.au/sites/default/files/2019-12/191220_cslr_discussion_paper.pdf.

- d. Coverage, Beyond Personal Advice⁸

The Treasury

“The Government has committed to establishing a CSLR that provides coverage in circumstances that goes beyond the provision of personal advice. That is, **that goes beyond the recommendation of the Ramsay Review that the CSLR initially cover financial advice failures** where a financial adviser has provided personal and/or general advice on relevant financial products to a consumer or small business.”

*Emphasis added

- e. What is the Appropriate Coverage for the CSLR, Beyond the Provision of Financial Advice?⁹

The Treasury

“The mid-coverage approach acknowledges that there is evidence of unpaid compensation in the provision of covered services and also acknowledges that services provided by prudentially regulated entities are at low risk of leaving a consumer or small business with unpaid determinations. **A potential criticism of the mid-coverage approach is that consumers may be unclear as to whether the services they are receiving are covered by the CSLR or not.**

A ‘broad-coverage approach’ would be for CSLR coverage to apply to all activities that require a financial firm to hold AFCA membership.”

“A benefit of the broad-coverage approach is that there would be greater protection and clarity for consumers who would be covered under the CSLR in respect of all activities requiring a financial firm to hold AFCA membership, including for prudentially regulated activities. **An additional benefit of a broader membership base is enhanced sustainability, as large and unexpected claims costs can be met by a wider range of members.**”

*Emphasis added

3. Press Statements Made by Government Ministers

- a. Press Conference, Parliament House, Canberra, 4 February 2019¹⁰

The Hon. Josh Frydenberg MP, Treasurer

“For the first time, the Government is establishing a compensation scheme of last resort.”

“Let me be clear, personal responsibility for financial decisions rests with those who make them. **However consumers and small businesses, who suffer harm as a result of misconduct, will now have access to redress.**”

*Emphasis added

⁸ Page 6: https://treasury.gov.au/sites/default/files/2019-12/191220_cslr_discussion_paper.pdf.

⁹ Pages 8 & 9: https://treasury.gov.au/sites/default/files/2019-12/191220_cslr_discussion_paper.pdf.

¹⁰ Transcript: <https://ministers.treasury.gov.au/ministers/josh-frydenberg-2018/transcripts/press-conference-parliament-house-canberra-2>.

- b. Interview with Sabra Lane, AM, ABC Radio National, 5 February 2019¹¹
The Hon. Josh Frydenberg MP, Treasurer
“We have announced that we’re establishing a compensation scheme of last resort, through the Australian Financial Complaints Authority, a body that we have set up, a body that was endorsed by Commissioner Hayne. And we will ensure that people have their opportunity to be heard for cases going back a decade, which coincides with the period that was looked at by the Royal Commission. **And in those cases, if judgements are made in favour of those particular individuals who have suffered misconduct and harm they will be compensated.**”
- *Emphasis added
- c. Doorstop Interview, Parliament House, Canberra, 5 February 2019¹²
The Hon. Josh Frydenberg MP, Treasurer
“The recommendations that we have accepted from Commissioner Hayne will protect consumers’ interests. They will build accountability in the system, they will enhance the effectiveness of our regulators and importantly, they will provide a compensation scheme of last resort, **providing a means of redress for the people who have suffered misconduct in the financial system.** These people’s cases now going back a decade **will be heard and where there are decisions in their favour, compensation will be paid. And importantly, it will be paid by those who are responsible for that misconduct.**”
- *Emphasis added
- d. Interview with Neil Mitchell, Mornings, 3AW, 5 February 2019¹³
The Hon. Josh Frydenberg MP, Treasurer
“I want our banks to provide a fair return to shareholders. I want our banks to remain stable. I want them to be properly prudentially regulated and let’s not forget they came through the GFC much better than some of their counterparts across the country but what I don’t want to see, and what the Government will not tolerate and what the Australian people will not tolerate is misconduct and one of the major announcements we made yesterday, Neil, is that we are setting up a compensation scheme of last resort. So going back 10 years, **people who have felt that they have been harmed by misconduct, by their financial institutions, will now have a process of redress through the Australian Financial Complaints Authority.**”
- *Emphasis added

¹¹ Transcript: <https://ministers.treasury.gov.au/ministers/josh-frydenberg-2018/transcripts/interview-sabra-lane-am-abc-radio-national-3>.

¹² Transcript: <https://ministers.treasury.gov.au/ministers/josh-frydenberg-2018/transcripts/doorstop-interview-parliament-house-canberra-5>.

¹³ Transcript: <https://ministers.treasury.gov.au/ministers/josh-frydenberg-2018/transcripts/interview-neil-mitchell-mornings-3aw-1>.