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Email: [financialadvice@fsc.org.au](mailto:financialadvice@fsc.org.au)

Blake Briggs  
Chief Executive Officer  
Financial Services Council  
Suite 30.01, Level 30  
9 Castlereagh Street  
Sydney NSW 2000

Dear Blake

## The value and future of advice licensing

The Stockbrokers and Investment Advisers Association (SIAA) is the professional body for the stockbroking and investment advice industry. Our members are Market Participants and wealth management firms that provide securities and investment advice, execution services and equity capital-raising for Australian investors, both retail and wholesale, and for businesses. Practitioner Members are suitably qualified professionals who are employed in the securities and derivatives industry.

SIAA members represent the full range of advice providers from full-service and online brokers to execution-only participants and they provide wealth advice and portfolio management services.

The history of the stockbroking profession in Australia can be found [here](#).

Thank you for the opportunity to provide feedback to FSC's Green Paper on the advice licensing framework (Green Paper).

Our response to the various questions is below.

### A recalibrated licensing regime that responds to firm diversity

**Question 1 – Is there a need to reform the advice licensing framework including the introduction of a tiered licensing framework? Why or why not?**

**Question 2 – If a tiered licensing framework were to be implemented, how might that work in practice?**

**Question 3 – Should regulatory relief be provided to licensees that have demonstrated strong governance and compliance processes? If yes, what sort of regulatory relief?**

#### **Question 4 – Are there any other ways the licensing framework could be reformed that were not discussed here?**

The first proposal of the paper is to introduce *a clear, tiered licensing framework that tailors obligations based on the size, risk profile and service scope of the entity.*

While we welcome the opportunity to better understand the basis of the question, we don't currently agree that there is a need to reform the advice licensing framework in the manner suggested. We do not consider that the current licensing regime is broken.

#### **The role of stockbrokers and investment advisers within the licensing framework**

While the Green Paper is focussed on how the licensing framework applies to advice licensees such as financial planning firms, we don't consider that it takes into account how the framework applies to other participants in the financial services industry such as the stockbrokers and investment advisers who are our members.

Prior to the current AFSL regime, regulation was product-specific with providers obliged to obtain multiple licenses and comply with potentially inconsistent regulation. For example, stockbrokers were originally licensed as securities dealers.

The AFSL regime was introduced to establish a single licensing regime for financial products and services by unifying various product specific licensing regimes which had imposed different requirements. This regime was more flexible than the previous product-based one. Stockbroking and investment advice firms became advice licensees with authorised representatives. The aim of the AFSL regime was to provide flexibility and accommodate the diversity of firms that operated within the financial services industry. Essentially, one size was designed to fit all.

Interestingly, while the Green Paper states that at the time the AFSL regime was created the market was characterised by a small number of large, vertically-integrated institutions, compared to today's substantially fragmented market, this is not the case for stockbrokers and investment advisers.

Stockbroking and investment advice firms are generally large businesses and becoming larger given that they operate in global markets. The investment required for such firms is very different to the investment required for financial planning firms, many of which are small businesses.

Amalgamations are constantly taking place to provide scale in the stockbroking and investment advice industry to meet those investment requirements. Efficiency in larger firms is generated by compliance departments.

Our members who are Market Participants are subject to the Operating Rules of the various exchanges including ASX, Cboe and NSX as well as the ASIC Market Integrity Rules. The ASIC Market Integrity Rules impose obligations on market participants regarding their operations, organisational and technical competence, client relationships, trading and capital requirements. ASIC has a dedicated markets supervision department. Stockbrokers are also required to fund the National Guarantee Fund to compensate clients for failures by stockbrokers. The National Guarantee Fund currently holds in excess of \$100 million. Our members who are Clearing and Settlement Participants are subject to the operating rules and procedures of ASX clearing and settlement.

These regulatory frameworks and obligations do not apply to financial planning firms.

We consider that the current licensing system is flexible enough to cover the wide variety of firms that operate in the financial services industry. It applies to our member firms who provide no advice,

execution only advice, general advice and personal advice to retail and wholesale clients. We consider that, for those firms that provide personal advice, the current system provides an alignment of interests between licensee and adviser.

Currently licensees are accountable for the conduct of their advisers and authorised representatives which incentivises them to conduct the necessary monitoring and oversight. These obligations apply irrespective of whether their advisers and authorised representatives provide no advice, general advice or personal advice. We are concerned that shifting liability and responsibility to individuals who provide personal advice as proposed in the Green Paper may result in a misalignment of interests between these two important elements of the licensing system thereby increasing risks.

### **Compensation Scheme of Last Resort**

We caution recommending a new recalibrated advice licensing regime in response to the recent Shield and First Guardian collapses and the blow-out in the costs of the Compensation Scheme of Last Resort (CSLR). The issues arising from the collapse of Shield and First Guardian and the CSLR go much further than the personal advice sector. The overwhelming contributor to the costs of the CSLR is failed or poorly performing managed investment schemes. This is due to a flaw in the CSLR's design that results in the personal financial advice sector bearing the full costs of failed or poorly performing managed investment schemes where advice has been provided. In relation to Shield and First Guardian, there has been misconduct on an industrial scale throughout the entire financial services industry involving a range of entities including lead generators, research houses, superannuation trustees, and managed investment schemes, in addition to some financial advisers. Very few advice licensees would have the financial resources to meet the totality of these managed investment scheme losses. What these challenges have in fact highlighted are the many flaws in the design of the CSLR. We have recommended to Treasury that once the Minister has made a decision on the FY26 levy blow-out, consultation is needed with industry to re-design the scheme and to review the operations of AFCA. We have recommended that the number of leviable sub-sectors must be increased to align with the circumstances giving rise to claims and if losses resulting from the failure or poor performance of managed investment schemes are to be accepted by the CSLR, responsible entities of managed investment schemes must be included as a primary leviable sub-sector. The link to our submission to Treasury on these matters is [here](#).

### **The provision of regulatory relief**

SIAA considers that our members have demonstrably strong governance and compliance processes. As highlighted above, our members who are Market Participants are subject to another layer of regulation and enforcement that is not imposed on other advice licensees. We query how regulatory relief could be provided to advice licensees that have demonstrated strong governance and compliance processes as it is not clear how the basis of such regulatory relief would be determined. SIAA supports regulatory simplification and a sensibly reduced regulatory burden for all licensees.

**Question 5 – Which entity would be best placed to regulate, oversee and monitor the compliance of these compliance service providers?**

**Question 6 - How can the security of relying upon third-party compliance service providers be strengthened without imposing excessive administrative burden?**

The second proposal is to *establish an accreditation framework for third party compliance service providers* that could *require them to meet defined standards of competency, governance and accountability*.

SIAA advocates for a reduction in regulatory burden and costs on the financial services industry. We consider that imposing another layer of regulation on ‘third party compliance service providers’ would only increase the already considerable costs of doing business. While licensees can outsource compliance tasks to third parties, they cannot outsource their responsibility and legal liability. We consider that this is appropriate.

The financial services industry has been very poorly served by ‘government-led’ bodies imposing educational and qualification standards. FASEA is an example of a bureaucracy that was averse to stakeholder engagement whose negative impact is still being felt by the financial advice industry. Such an accreditation body will only increase regulatory burden and red tape.

Accordingly, we do not support the establishment of an accreditation framework for third party compliance providers.

### **Balanced accountability between licensees and advisers that empowers individual practitioners**

**Question 7 – To what extent would the introduction of a practising certificate benefit the financial advice industry.**

**Question 8 – What are the potential challenges in rolling out a practising certificate model?**

The Green Paper proposes that government and industry *embark on a consultation around the feasibility of a practicing certificate model that would require advisers to obtain a practicing certificate confirming their compliance with registration, CPD and ethical standards*.

We do not support the introduction of a practicing certificate model and do not consider that it would benefit the financial advice industry. We note that the Financial Services Council proposed reform of the registration and licensing of financial advice in its 2021 Green Paper. In our [response](#) we explained why we did not support the concept of individual registration of advisers as it was inappropriate for the stockbroking and investment advice industry. Feedback from our Principal Members with large numbers of advisers pointed out that it was not logistically sensible for registration obligation to be devolved to individual advisers. Licensees undertake active oversight of their advisers to ensure they are fulfilling their obligations in relation to the fit and proper declaration and education and CPD obligations. The process of checks that attends adviser registration by licensees are an important aspect of securing PI insurance, as insurance firms need to confirm that licensees have active oversight of their advisers. We highlighted our concerns that obtaining PI insurance would become even more difficult if the licensee could not provide evidence to the insurer of its active oversight of adviser registration.

Our reasons for not supporting the introduction of a practicing certificate are the same as those that underpin our opposition to individual adviser registration.

We also consider that imposing another step in registering an adviser will add to a licensee’s regulatory burden and costs without any benefit to the adviser or the licensee.

**Question 9 – Are there any other ways accountability can be better apportioned between licensees and advisers?**

As we have previously stated, we do not consider that there is a need to change the licensing framework to change accountabilities between licensees and advisers.

**Question 10 – How might the financial adviser register better account for the professional history of responsible managers and persons?**

**Question 11 – Are there any other measures that would increase transparency regarding professional conduct and performance?**

**Question 12 – Can these potential solutions be implemented without imposing a significant administrative burden on licensees?**

**Question 13 – Should the adviser skills and performance registry include internal disciplinary actions by a licensee?**

**Question 14 – Should FSCP matters no longer be anonymised to assist with the transparency of professional conduct and performance?**

SIAA does not agree with the proposal to introduce an *adviser skills and performance registry that would allow clients, licensees and regulators to access a clear record of an adviser's qualifications, track record and any historical issues with performance or conduct.*

We also don't understand the issues that the Green Paper raises about reduced transparency, particularly when it comes to tracking advisers' professional histories. We don't agree with the statement that *financial advisers are not as easily identifiable outside of their AFSL affiliation* and that while the *Financial Advisers Register provides some level of visibility, it is tied to the licensee rather than the individual's long term record. This can create challenges in tracking an adviser's history, especially if they move frequently between licensees.*

Our objection to this proposal is that there is already a centralised and comprehensive financial adviser register (the FAR) that is a publicly available via the ASIC moneysmart website of people who provide personal advice on investments, superannuation and life insurance. It contains details of advisers' qualifications and employment history. Historical data on retired advisers can also be accessed.

Members of the public are encouraged to use the register to find out:

- where a financial adviser has worked
- their qualifications and training
- memberships of professional bodies, and
- what products they can advise on

They can use the drop-down arrow to search by:

- name, number or ABN
- suburb or postcode.

The FAR also contains details of ASIC banning and disqualifications orders, actions taken by the Financial Services and Credit Panel (FSCP) and any enforceable undertaking accepted by ASIC and/or the FSCP from the financial adviser.

Our member firms are currently spending a considerable amount of time and incurring not-inconsiderable costs to update the register so that it contains a comprehensive history of each adviser's qualifications and work history. We note that ASIC has been engaged for some months on seeking documentary verification of the professional histories of those advisers seeking to utilise the experienced adviser pathway in order to ensure that the adviser's history is fully displayed on the FAR. ASIC has also advised that it intends to undertake a compliance work program in 2026 to further strengthen the data available on the FAR about the professional histories of financial advisers. We therefore encourage the FSC to become informed about the work being undertaken by the regulator to address any lack of transparency about the professional histories of financial advisers.

We would have considerable concerns about a proposal that would require a public register to include *a complete record of an adviser's broader compliance history, including instances where advisers are subject to internal investigations.*

The FAR includes actions taken by the FSCP. There was extensive consultation undertaken on what matters would be the subject of actions by the FSCP and whether these would be included in the FAR. During that consultation we argued that details of a first offence or a warning for a breach of a minor, administrative matter should not be included on the FAR. We have not changed our position on this. We do not agree that FSCP matters should no longer be anonymised. We consider that the current situation reflects an appropriate balance between consumer interests and those of advisers.

We strongly disagree with the proposal that internal disciplinary actions by licensees should be made public. We consider that such a proposal would represent a backwards step in compliance and act as a strong disincentive to licensees to undertake internal disciplinary actions against their advisers if they thought that the outcome of those actions would be made publicly available on an adviser's record.

We therefore consider that introducing an adviser skills and performance registry as proposed would be an unnecessary duplication of effort that would impose a significant additional administrative burden on licensees for no benefit to either consumers or advisers.

## **Financial resource requirements that adequately protect consumers**

**Question 15 – Should cash and/or capital requirements for AFS licensees be strengthened?**

**Question 16 – What other measures could be implemented to enhance the monitoring of AFS licensees' financial health?**

**Question 17 – Should capital adequacy requirements be adjusted based on the specific risks associated with each AFS licensee's activities, such as client asset management versus advice-only services? What risk metrics would be most appropriate for determining these capital levels?**

We note that the Green Paper points out that advice-only AFSL holders are subject to fewer stringent requirements than others that are required to adhere to specific liquidity and capital requirements.

SIAA's members who are Market Participants are required to comply with significant and complex capital adequacy requirements including:

- minimum capital obligations imposed on them by the Market Integrity Rules
- the requirement to manage and lodge margin each day with ASX as part of their daily settlement requirements
- provision of a monthly liquidity return to ASX
- notification to ASX and ASIC of significant professional indemnity claims
- cash flow forecasting to ensure they have sufficient cash to manage their obligations into the future.

ASX can also require Market Participants to notify it of their capital position more regularly. By way of example, during the COVID-19 pandemic, Market Participants were required to report their liquid margin to ASX on a daily basis. This meant that Market Participants were monitoring their liquidity daily. These requirements ensure that at all times ASX and ASIC have visibility of their operations. This sets Market Participants apart from other financial advice providers who are not subject to these requirements.

SIAA would not be supportive of any proposals that would increase cash and capital requirements for our members or make them subject to assessment for approval by government. This would require licensees to provide the government with their current cash and capital position to enable it to undertake the assessment. We consider this to be an unnecessary level of government intervention and regulation.

**Question 18 – Given the lack of ongoing oversight of PI insurance coverage after AFSL registration, should regulators implement periodic checks to ensure coverage is maintained and adequate? How frequently should this oversight occur?**

**Question 19 – Would requiring financial advisers to be covered either individually or by their AFS licensee with PI insurance improve accountability and consumer protection? What challenges or benefits might arise from such a change?**

**Question 20 – How significant is the problem of underinsurance and policy exclusions within the financial advice sector? Should stricter guidelines be introduced to limit exclusions and ensure PI policies cover a broader range of claims?**

The key issue for the financial advice sector is that currently PI insurance does not respond in any meaningful way to complaints involving the failure of financial advice firms.

During consultations on the design of the CSLR, we pointed out that the scheme design excluded recognition of ASIC's role in ensuring companies have sufficient capital adequacy and appropriate PI insurance to meet their internal and external dispute compensation obligations. We highlighted at the time that it was vital to understand the source of unpaid determinations both to reduce the risk to consumers of unpaid determinations and clarify if the design of the CSLR was actuarially sound,

and pointed out that the Minister had announced that the government would consult on proposals to enhance the effectiveness of PI insurance in responding to compensation claims to ensure that the scheme truly operated as a scheme of last resort. Unfortunately, that consultation never proceeded before the scheme was introduced despite our strong view that consultation on the effectiveness of PI insurance needed to take place before the CSLR legislation was passed, given its importance in clarifying the source of unpaid determinations and reduction of risk to consumers.

To date, ASIC has not conducted a review of the level of PI insurance held by personal advice firms and it is not clear what role PI insurance has played in the high-profile collapses that have occurred.

There is a lack of transparency on this issue. The current scheme is not operating as a true scheme of last resort. PI insurance should operate as the first line of defence so that the CSLR is truly a last resort for uncompensated losses. The scheme is not operating as intended because PI insurance is not responding to claims in the way envisioned during the scheme's design. Those firms who have obtained an appropriate level of PI cover and are paying the relevant premiums are essentially paying for those firms that have not obtained appropriate PI cover. A small group of financial advisers has been left with a huge levy to pay for failures to which PI insurance has not responded.

We consider that a review of the role that PI insurance plays in responding to recent high-profile collapses is needed to inform any reform in this area.

## Conclusion

If you require additional information or wish to discuss this submission in greater detail please do not hesitate to contact SIAA's policy manager, Michelle Huckel, using the contact details in the covering email.

Kind regards

A handwritten signature in black ink, appearing to be 'J Fox', with a long horizontal stroke extending to the right.

Judith Fox  
Chief Executive Officer