

Appendix B: Overview of submissions

Overall reactions in submissions

Submissions supported a comprehensive approach to addressing the limitations of the current compensation arrangements, with the pursuit of remedial solutions on a number of fronts or through a strengthening of key obligations on licensees, such as their financial resourcing.

Views were divided on the need for, and operation of, a statutory compensation scheme of last resort (described in more detail below). Submissions by retirees who suffered personal losses through their SMSF investments in managed investment schemes operated by Trio Capital sought a last resort scheme to give them similar redress to APRA-regulated superannuation funds under the SIS Act.

Some submissions went further than the Consultation Paper and supported stronger obligations on product issuers to better protect consumers from incurring loss in the first instance. They argued that this should be seen as a precondition to a last resort scheme.

Possible remedial measure^a

Reactions

Scope for further measures to lift the standards of licensee conduct and to assist consumers look after their own interests

Submissions generally support measures being taken as part of the *Future of Financial Advice* package and suggest these changes will reduce the incidence of consumer loss from inappropriate advice over time. There was a suggestion that those sectors that met higher professional standards, or dealt in lower risk products or services, should be allowed to reduce the limits of their insurance policies.

Scope for a tighter approach to the administration of the current requirement to hold professional indemnity insurance

Some submissions express the need for a more proactive administration of professional indemnity insurance, including by providing more guidance on the measure of adequate cover and an onus on licensees to inform ASIC of the cover held. Other submissions doubt whether there would be any benefit in licensees providing a copy of their insurance contract to ASIC, and noted the cost of such an approach.

Improved disclosure of a licensee's professional indemnity insurance cover

Consumer advocates support more access to information about a licensee's professional indemnity insurance cover as a means of reducing discovery costs and assisting consumer to access the prospect of recovery. Others suggest further disclosure of complex professional indemnity insurance cover would not be meaningful to consumers.

Possible arrangements to deal with claims after a licensee ceases to trade

Consumer advocates support the notion that licensees who cease to trade should be required to make provision for claims arising thereafter. Practical concerns were raised by insurers and financial planners about the supply of run-off cover over the long term and its cost.

Additional requirements in regard to the financial security of licensees

An industry group supported strengthening capital requirements for licensees. One submission suggests that capital held by a licensee should be sufficient to cover excess payments that might be required under an insurance policy. Submissions caution against setting capital requirements at a level that acts as a barrier to entry and disadvantages independently owned licensees. A suggestion was made that licensees who deal in less complex products or services should be spared the need to hold additional capital.

Merits, and key design components, of a last resort scheme to provide compensation for retail clients, including the approach to industry funding

Supporters of a last resort scheme suggest that it would lessen the impact of uncompensated loss on individuals and the community more broadly, improve consumer confidence in the financial services sector and in EDR schemes, and provide a stronger incentive by each sector to self regulate and report poor conduct to the regulator.

Concerns were raised about higher risk of moral hazard to consumers and financial intermediaries, increased cost of providing licensed financial services, and the subsidisation of poor conduct by licensees that act properly and prudently. Some submitters said their own industry sector had a good record with their customers and should not be required to participate in a scheme.

It was also suggested that the Future of Financial Advice changes should be bedded down before the introduction of a scheme, and other changes should be made to reduce the risk of mis selling by product issuers.

Source: Submissions in response to Consultation Paper with copies of all submissions made available for public release at futureofadvice.treasury.gov.au.

(a) Outlined in Chapter 5 of the Consultation Paper.

