Industry rails against ‘kick in the guts’ ASIC adviser levy

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Tahn Sharpe
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Advice industry participants have unified in opposition to a significant increase in the annual adviser levy, and questioned the efficacy of an industry funding model that penalises compliant advisers for breaches committed by those that have left the industry.

The latest adviser levy for FY19/20 came in at $1500 per licensee plus $2,426 per adviser, with the adviser portion increasing from $1,142 in FY18/19 and $934 in FY17/18.

That’s an increase of 160 per cent in two years for an adviser cohort already struggling with the cost to serve.

This increase is also being concentrated across advisers providing retail advice; wholesale advisers have a separate levy, which this year sits at $29 per adviser.

What many take umbrage to is not the cost itself, but the misallocation of expenses behind it.

As noted by CoreData founder Andrew Inwood on a session at the recent AIA Adviser Summit, the vast bulk of ASIC’s attention and expenses has historically been aimed at what he called the “top group” of institutional providers.

Those institutional providers – the big banks and AMP – have largely left the industry or are in the process of doing so. The cost of prosecuting the issues that saw their exit, however, such as fees-for-no-service and non-compliance, is being directed towards the remaining advisers.

According to The Fold Legal solicitor Simon Carrodus, this dynamic is part of a larger flaw in the user-pays funding model.

“Certainly, in financial advice, the parts who are left over in the industry tend to pay for the sins of those who’ve left,” Carrodus says. “It’s generally giant institutions and major licensees that have broken the rules, but the levy isn’t being funded by them.”

ASIC’s Cost Recovery Implementation Statement makes it clear the bulk of its costs come from the top end of town; The first two reasons it gives for requiring “additional funding” this year are its accelerated ‘why not litigate’ enforcement strategy and an “expanded regulation” of financial services as part of the Hayne royal commission.

Not all advisers that have left the industry have done the wrong thing, Carrodus argues, but it makes sense that the ones leaving are more likely to be responsible for running up regulatory costs.

"By and large the ones leaving the advice industry have probably contributed more to the regulatory costs than the ones who are remaining," he says.

For the remaining advisers already tarnished with reputational stains largely stemming from transgressions committed by the institutions, having to foot the bill is a bitter pill to swallow.

"It's a big kick in the guts," Carrodus says.

'Just another thing'

Fortnum chief executive Neil Younger calls the increased levy "prohibitively high".

With over 200 advisers under the Fortnum umbrella, Younger is acutely aware of how much higher levies bite across an adviser network. "A lot of our practices have les than ten advisers so it's a lot for them," he notes.

Younger says he accepts the industry funding model but the current industry circumstances are making it extremely difficult for advisers to soak up the added expense.

"You've got increasing costs spread across a decreasing population resulting in a significant increase for the levy, and then you've got a 35 per cent increase in professional indemnity [insurance] costs as well," he says.

Cairns adviser Peter Horsfield says the increased levy is "just another thing" that will eventually get passed onto clients and make advice less accessible.

"It's just going to mean more cost, which means less advisers in the industry and clients paying more," he adds.

Policy, not regulation

While much of the anger and frustration about the industry funding model is directed at the regulator, the industry funding model is a government initiative.

Treasury consulted on the industry funding model in 2015 and again in 2016 before draft legislation was released for public consultation in 2017 and then again in 2018.

One of the groups who voiced early concern about possible inequities in the model was the Financial Planning Association.

"[The levy] is expected to have a greater impact on small licensee businesses [which] is not consistent with ASIC surveillance and education activity," the FPA stated in its 2015 submission. "Feedback from our members who are small licensee businesses state that ASIC rarely engage with them… The regulator's focus is typically on larger licensees."

The FPA is now part of a group of industry associations challenging the increased levy, along with CPA Australia, Chartered Accountants Australia and New Zealand, the Institute of Public Accountants and the SMSF Association.