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2016-17 pre-budget submission

Submission to Department of the Treasury

ABOUT US

Set up by consumers for consumers, CHOICE is the consumer advocate that provides Australians with information and advice, free from commercial bias. By mobilising Australia's largest and loudest consumer movement, CHOICE fights to hold industry and government accountable and achieve real change on the issues that matter most.

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INTRODUCTION

Consumers are the single largest group impacted by economic decision making. CHOICE encourages the Federal Government to consider consumer needs as a priority when preparing the 2016-17 Federal Budget.

Consumer needs are particularly important for any budget initiatives which relate to health costs. Ongoing CHOICE research shows that out-of-pocket health costs are a major pain point for Australian households, with the majority of people worried about increasing costs of medication, medical services or health insurance. Given the pressure these costs place on household budgets CHOICE strongly warns against budget measures that will lead to greater out-of-pocket health costs for consumers.

The 2016-17 Budget presents an opportunity to restore consumer faith in the finance and banking systems through two key initiatives: providing adequate funding to the finance regulator and establishing a compensation scheme of last resort in the finance sector through an industry levy. These measures would give consumers confidence that when a major bank or financial adviser does the wrong thing, a regulator is empowered to take action and they will be compensated for any loss caused by the financial service provider's actions.

Funding for the Australian markets and finance regulator, ASIC, needs to be addressed as a matter of priority, as past cuts have already led to reduced enforcement, surveillance and investigation activities. Further decreases in surveillance activities are expected in the next financial year. Consumers cannot trust financial service providers in an environment with an underfunded regulator.

Finally, CHOICE cautions against any budget measures that reduce the GST Low Value Threshold for international goods and services. Any changes to the threshold must be built on a clear cost-benefit analysis showing that changes will earn more revenue than they incur through inefficient costs of collection.

SUMMARY OF RECOMMENDATIONS

Health care	That no budget measure leads to additional out-of-pocket costs for consumers for medical services, medications or health insurance.
ASIC funding	That ASIC’s core funding is increased while consideration is given to an industry-pays system of funding.
	That the Federal Government commits to industry-pays funding model for ASIC that leads to secure, increased and non-conflicted funding in the long-term.
Compensation scheme of last resort	The 2016-17 Federal Budget allocates \$16,592,456.55 to be granted to consumers who have exhausted every avenue to enforce determinations from the Financial Ombudsman Scheme.
	That the Federal Government considers funding a process to determine other sources of valid unpaid claims.
	That a compensation scheme of last resort for the financial sector is establish through a small levy on Australian Financial Services License holders, based on risk of consumer harm.
GST Low Value Threshold	That no change is made to the GST LVT until it can be demonstrated that the revenue raised can cover the costs of collection.

1. Health costs

CHOICE has undertaken research into cost-of-living concerns and consumer perception of key debates through seven quarterly nationally-representative Consumer Pulse surveys. The surveys have been conducted every quarter from June 2014. They measure what is causing the greatest anxiety for people trying to manage household budgets.

Health and medical costs, including out-of-pocket expenses and health insurance, have remained a major cost of living concern for a large group of consumers. In December 2015, 67% of people were concerned about health and medical costs, making it the third largest concern after electricity and food costs.¹ This concern is spread evenly among age groups and genders. 50% of people said they are worried about the cost of seeing a General Practitioner (GP) and 61% are concerned about the cost of medicines.²

People are looking for equitable access to quality health care. CHOICE strongly cautions against any budget measure that will result in additional out-of-pocket costs for medical services, medications or health insurance.

Recommendation

- That no budget measure leads to additional out-of-pocket costs for consumers for medical services, medications or health insurance.

2. ASIC funding

Currently, funding arrangements for Australia's corporate, markets and financial services regulator – the Australian Securities and Investments Commission (ASIC) – are insufficient and uncertain. The 2016-17 budget should confirm additional funding for ASIC in the short term as well as industry-pays arrangements in the long term.

¹ The December CHOICE Consumer Pulse survey was designed and analysed by CHOICE with fieldwork by GMI/Lightspeed Research conducted with 1019 consumers aged 18-75 years between 2 and 9 December, 2015. Final data has been weighted to ensure it is representative of the Australian population based on the ABS Census 2011.

² Ibid.

Funding cuts have reduced ASIC’s ability to protect consumers

In 2014-15 ASIC’s budget was reduced by \$120 million over four years, in addition to an efficiency dividend of \$47 million over the same period.³ This resulted in a noticeable immediate funding drop in the 2014-15 year when ASIC was granted \$311,942,000 from government revenue. This was a 10% reduction in government funding from the previous financial year, with ASIC’s overall operating expenses reduced by 12% in the financial year.⁴

Cuts to ASICs operating budget have resulted – and will continue to result – in a substantially reduced number of actions to protect consumers of financial services. There has been a dramatic decrease in the number of key surveillance, enforcement and investigation activities ASIC has been able to undertake in 2014-15 compared to the previous financial year. For example, there has been a 74% decrease in the number of high-intensity surveillance activities and a 135% decrease in the number of actions against potentially misleading or deceptive promotional material.

Table one: Comparison of ASIC’s key enforcement, surveillance and investigations activity between 2013-14 and 2014-15⁵

	2014-15 activity	2013-14 activity	Percent difference
High-intensity surveillances	1016	1767	-74%
Instances of potentially misleading or deceptive promotional material withdrawn or amended	54	127	-135%
Investigations commenced	229	224	2%
Investigations completed	231	238	-3%
Civil litigation actions completed	54	28	48%
Civil litigation actions commenced	34	52	-53%
Criminal litigation actions completed	25	32	-28%
Criminal litigation actions commenced	28	30	-7%
Administrative actions completed	88	89	-1%
Administrative actions commenced	104	81	22%

³ ASIC (2014) Annual Report 2013-2014, <http://asic.gov.au/about-asic/corporate-publications/asic-annualreports/> p.4

⁴ ASIC (2015) Annual Report 2014-2015, http://download.asic.gov.au/media/3437945/asic-annual-report-2014-15-full.pdf?_ga=1.238564288.1398207759.1454312612 p. 32.

⁵ Ibid, pp. 6-9. Figures are combined number of actions from priority one and two outcomes summarised in the Annual Report, percentages have been rounded to the nearest whole number.

People or companies banned from financial services	53	63	-19%
People or companies banned from credit services	39	46	-18%
Number of infringement notices issued	83	39	53%
Number of people convicted	17	15	12%
Number of people imprisoned	9	6	33%
People disqualified or removed from directing companies	40	62	-55%
Action taken against auditors and liquidators	10	8	20%
Summary prosecutions for strict liability offenses	355	314	12%

Surveillance resources are expected to continue to decrease in several key areas in 2015-16. In its latest Annual Report, ASIC has noted that they will reduce the number of surveillance activities for:

- The ten investment managers or superannuation entities most at risk of not complying with law or regulations.
- The 121 investment managers or superannuation entities where ASIC has identified risks or has concerns.
- 2,027 small businesses identified in the top five at risk industries with the greatest potential to conduct illegal phoenix activity.
- Financial reports of 2,000 listed and 26,000 unlisted entities.
- Investment banks.
- Registered liquidators.⁶

In practical terms, an ongoing reduction in funding for ASIC means that consumers are less able to trust financial institutions.

ASIC needs increased and certain funding

Uncertain and insufficient funding for ASIC needs to be addressed in the short and long-term. Ultimately, funding must be sufficient to allow ASIC to be proactive (able to uncover and investigate suspected misconduct rather than waiting for a crisis), independent (accountable to the Federal Government and Parliament, but able to set its own agenda), flexible (able to keep up with rapid change in the industries it regulates) and able to offer salaries in line with the financial services industry.⁷

⁶ Ibid, pp. 28-29.

⁷ See <http://consumeraction.org.au/wp-content/uploads/2015/10/Joint-consumer-advocate-submission-ASIC-industry-funding-October-2015.pdf>

The Federal Government has committed to consider three-year funding arrangements and an industry-pays funding model for ASIC.⁸ CHOICE and other consumer organisations have raised a number of concerns with the proposed industry-pays funding model.⁹ Of greatest concern is that the initial government proposal would not lead to increased funding for ASIC and some aspects of the proposal pose risks to ASIC's independence. CHOICE reiterates its call for the Federal Government to commit to industry-pays funding model for ASIC that leads to secure increased and non-conflicted funding in the long-term.

Until future funding arrangements are confirmed and take effect, ASIC requires additional funds to properly fulfil its mandate and protect consumers. Final consideration and possible implementation of an industry-pays funding model will take some time. Until this process is finalised, the Federal Budget should set aside funds to restore ASIC's operating budget to pre-2013-2014 levels with consideration given for inflation. Additional funding should consider, at a minimum, funds necessary to restore staffing levels to 2013-14 capacity (as staffing reductions occurred proactively in the lead up to the 2014-15 budget) and conduct increased surveillance activity.

Recommendations

- That ASIC's core funding is increased while consideration is given to an industry-pays system of funding.
- That the Federal Government commits to industry-pays funding model for ASIC that leads to secure, increased and non-conflicted funding in the long-term.

3. Funding a compensation scheme of last resort

Consumer confidence in the financial system depends on consumers knowing that they can expect fair redress when a financial service provider breaks the law. There remain a number of instances where consumers have received a positive outcome through the Financial Ombudsman Schemes (FOS) External Dispute Resolution (EDR) but compensation has been not paid. A last resort compensation scheme is needed to provide redress to consumers with a

⁸ Government Response to the Financial System Inquiry (2015)

http://www.treasury.gov.au/~media/Treasury/Publications%20and%20Media/Publications/2015/Government%20response%20to%20the%20Financial%20System%20Inquiry/Downloads/PDF/Government_response_to_FSI_2015.ashx

⁹ <http://consumeraction.org.au/wp-content/uploads/2015/10/Joint-consumer-advocate-submission-ASIC-industry-funding-October-2015.pdf>

EDR determination or court judgement in their favour but who could not receive funds from the financial services provider or through insurance.

CHOICE urges the Federal Government to commit to covering retrospective costs for a last resort compensation scheme for consumers of financial services and to establish a funding measure for future costs as a way to fix past wrongs and to restore consumer trust in the financial system.

As at September 2015 the Financial Services Ombudsman (FOS) had 133 unpaid determinations. The total value of unpaid determinations was \$12.56 million, with interest and adjustments for inflation the value of uncompensated loss was \$16,592,456.55.¹⁰ It is likely that there are a number of other consumers who may have valid claims but have not gone through the FOS determination process as they've been informed is no hope of a determination being paid. The 2016-17 Federal Budget could address both of these problems. First, the budget should provide a one-off grant of funds to cover the known uncompensated loss from FOS determinations. Second, the budget should set aside funds to establish a process to determine if other consumers should be eligible for compensation. Once this amount is quantified, further additional funding measures should be considered.

Looking to the future, a compensation scheme of last resort should be established for any uncompensated EDR determination or court judgements from 1 July 2016. The funding mechanism should reduce the likelihood of any consumer needing to use the scheme by requiring members of the finance industry to cover costs, with those posing the greatest risk to consumers contributing the most. As proposed by FOS, a small levy can be placed on Australian Financial Services License holders, based on risk of consumer harm, to cover any future unpaid compensation.¹¹ This should be administered as part of the industry funding model for ASIC and consumers should be required to have exhausted every avenue to receive payment for a determination from an EDR process or from a court in order to participate in this process.

Recommendations

¹⁰ FOS, December 2015, Submission on proposed industry funding model for ASIC <https://www.fos.org.au/custom/files/docs/proposed-industry-funding-model-for-the-australian-securities-and-investments-commission-fos-submission-december-2015.pdf>

¹¹

- The 2016-17 Federal Budget allocates \$16,592,456.55 to be granted to consumers who have exhausted every avenue to enforce determinations from the Financial Ombudsman Scheme.
- That the Federal Government consider funding a process to determine other sources of valid unpaid claims.
- That a compensation scheme of last resort for the financial sector is establish through a small levy on Australian Financial Services License holders, based on risk of consumer harm.

4. GST Low Value Threshold

Recently, there has been a renewed push to reassess the Goods and Services Tax Low-Value-Threshold (GST LVT).

Currently, consumers who purchase goods and services from overseas do not pay the GST or other duties if their purchase is less than \$1000 in value. CHOICE supports the principal of tax-neutrality however we caution against moves to lower or abolish the LVT in the absence of a business case proving that it would raise net revenue.

In August 2015 the Federal Government announced it had reached an agreement with state and territory governments to broaden the GST to cover overseas online transactions under \$1,000.¹² GST would apply to all goods and services, lowering the threshold to \$0.

CHOICE understands that legislation will require international businesses who sell digital or physical products to Australians with an Australian turnover of \$75,000 or more to register and charge GST.¹³ It is unclear how or if GST will be charged on goods sold by businesses earning less than this amount. The statement in August claimed that “As goods would not be stopped at the border, administering a vendor registration model would have a relatively low cost” however no costings have been made public and it is unclear if a full cost-benefit analysis has been undertaken.¹⁴

¹² Statement: Council on Federal Financial Relations Tax Reform Workshop, 21 August 2015, <http://jbh.ministers.treasury.gov.au/media-release/075-2015/>

¹³ Ibid.

¹⁴ Ibid.

The Federal Government has committed to drafting legislation for the new arrangements, with the aim of legislation coming into effect from 1 July 2017. To date, no legislation has been released for consultation.

CHOICE is extremely concerned that the proposed change to the GST LVT will lead to additional costs to Australian consumers, on top of the GST collected. It is also likely that the cost of administering the scheme will be greater than revenue raised. There is no publicly available evidence that a reduced LVT would raise more revenue than it would cost to administer.¹⁵ The Productivity Commission examined LVT in 2011, considering the costs that would be borne by Australian Customs, couriers and Australia Post, and consumers and businesses if the threshold was lowered to \$100 and compared these with the revenue that would be raised. It found that the costs in 2010-11 would total \$1.2 billion while the amount raised would be just \$495 million (in both GST and duty), resulting in a net loss of over \$700 million.¹⁶

One strategy put forward by Australian retailers to allow lower GST threshold to raise money is to outsource the collection costs to consumers. For example, it has been suggested that Australia could adopt a similar approach to the UK, where the Royal Mail charges an £8 (AUD\$16.25) collection fee for parcels that are liable for tax or customs.¹⁷ If Australia's GST threshold was lowered to, for example, \$20, this approach would turn a \$20 parcel into \$35 parcel before even applying GST. It would mean charging consumers \$15 to collect \$2 in tax. CHOICE strongly opposes any move to push collection costs to consumers when there is no overall benefit to the community.

Recommendation:

- That no change is made to the GST LVT until it can be demonstrated that the revenue raised can cover the costs of collection.

¹⁵ See <https://ipa.org.au/publications/2322/no-to-the-gst-attack>

¹⁶ Productivity Commission, (2011), Economic Structure and Performance of the Australian Retail Industry.

¹⁷ See <http://www.royalmail.com/help-and-support/i-need-advice-about-customs-requirements#Receiving mail from abroad>