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# Post-Implementation Review: Compensation Scheme of Last Resort

Submission by the Compensation Scheme of Last Resort

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Compensation Scheme of Last Resort Limited ABN 17 669 477 052

COMPENSATION SCHEME OF LAST RESORT

# Contents

# Executive summary

The Compensation Scheme of Last Resort (the CSLR, CSLR, the Scheme) was established with bipartisan parliamentary support as a result of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry[1] (the Hayne Royal Commission) and the Ramsay Review.[2] The primary purpose of the Scheme is to enhance consumer trust in the Australian financial services system and provide a more sufficient means of compensation to persons who have been victims of financial misconduct.

Since it began operations in April 2024, the CSLR has received 351 claims and paid $13.7m in compensation to victims of financial misconduct.[3] The CSLR welcomes this post-implementation review and looks forward to Treasury presenting its findings.

The CSLR has regular and meaningful engagement with multiple key stakeholders including consumers, consumer advocates, industry participants, the Australian Financial Complaints Authority (AFCA), the Australian Securities and Investments Commission (ASIC), the Treasury, and the Australian Government. These engagements have allowed the CSLR to identify practical solutions to address current and emerging implementation and procedural challenges.

The CSLR's submission to the post-implementation review is a holistic reflection of the observations it has had in connection with implementing the Scheme. As an industry-funded scheme, we acknowledge the unique perspective we bring and our response is aimed at addressing the following objectives and challenges:

1. **Ensuring the sustainability of the CSLR**

   The CSLR levy estimate of $78m for FY26, and a likely higher number for FY27, has a significant impact on an industry-funded compensation Scheme. Adjustments are required to ensure the balance of providing compensation to individuals who have suffered harm from financial misconduct with an appropriate and sustainable funding model.

2. **Providing support for victims of financial misconduct**

   The CSLR expects to support over 2,000 victims of financial misconduct in FY26. CSLR's experience with victims has highlighted the emotional and financial impacts and the need for appropriate support for those who have placed significant trust in licenced financial services representatives in navigating complex financial landscape.

3. **Overcoming challenges and shortcomings of the current CSLR funding structure**

   Multiple and concurrent levies requiring long lead times will hinder the CSLR's ability to facilitate effective and timely payment of compensation payments. This impedes victims of financial misconduct from receiving compensation and creates added disruption to the financial sub sectors that fund the Scheme.

[1] Commonwealth, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, *Final Report*, 2019
[2] Australian Government, Department of Treasury, 2017*, Review into Dispute Resolution and Complaints Framework, Supplementary Final Report*
[3] Data as at 31 January 2025.

4. **Addressing industry practices to enhance trust in the financial sector**

   While the remit of the Scheme is relatively confined, the CSLR has observed certain misconduct that has a significant impact on trust within the financial system. The CSLR observes that the majority of financial firms within the four sub-sectors under the Scheme's remit are compliant with regulatory expectations. However, those who do not comply have a disproportionately negative impact on an entire sub-sector.

Our submission outlines a broad range of important matters and issues that would benefit from further consideration to aid in improving the sustainability of the Scheme. The issues the CSLR consider will have the greatest impact on achieving our objectives are outlined below.

1. **Compensate for capital loss only**

   As a scheme of last resort, the CSLR should make compensation for capital loss only (see section 1.1).

2. **Increase access to funds via a larger reserve or ability to borrow funds from the government**

   An improved funding model would ensure the CSLR receives levy funds closer to the time it publishes its levy estimate. The CSLR should also have access to a larger reserve that allows for the effective management of fluctuations in claim volumes (see section 3.4).

3. **Clarify the application of the $150,000 compensation cap**

   Legislative change should clarify that the $150,000 compensation cap is restricted to individuals on a beneficial entitlement basis. (see section 1.4).

4. **Improve professional indemnity requirements**

   An improved professional indemnity regime for Australian Financial Services (AFS) and Australian Credit (AC) licensees that is both affordable and adequate would improve consumer protections (see section 1.2).

5. **Enable an alternate approach for complaints related to large firm failure**

   Complaints related to large financial firm failures could be considered using a streamlined and cost-effective approach. (see section 1.7).

6. **Increase subrogation powers and opportunities to apply deductions**

   Legislative and regulatory change should broaden the CSLR's subrogation rights to maximise all potential avenues for recoveries, supporting a reduction in compensation payments as a result of amounts a person may receive in connection with matters covered by the relevant AFCA determination in any capacity, including an insurance payout or class action settlement (see sections 1.5 and 1.6).

The CSLR believes the consideration and future implementation of these recommendations would lead to beneficial outcomes for victims of financial misconduct and for the sustainability of the Scheme.

# Background and context

## Purpose of the CSLR

The CSLR is an independent not-for-profit Australian public company, limited by guarantee, and incorporated on 5 July 2023. The CSLR is not a regulator or a government agency. The Board is appointed by the CSLR, and the Chair is an independent appointment made by the presiding Minister.

The CSLR was established to bolster the Australian community's trust and confidence in the financial system's dispute resolution framework. Its purpose is to safeguard consumer trust and ensure the system continues to meet the needs of its users, providing relief to victims of financial misconduct who may otherwise struggle to obtain compensation.

Its establishment was recommended by the Hayne Royal Commission and the Ramsay Review, on the basis that existing arrangements were insufficient to compensate individuals impacted by conduct that fell below regulatory standards and expectations.

After all other avenues to recover the amount determined under an AFCA award have been exhausted, the CSLR provides compensation of up to $150,000 as a last resort.

Compensation is eligible for matters in relation to the following sub-sectors of the financial system:

- Personal financial advice provided to retail clients on relevant financial products
- Securities dealing for retail clients
- Credit intermediation
- Credit provision.

## Why do we need a scheme of ‘last resort’?

At the foundation of financial services is trust that the organisation and people supporting individuals through complex and challenging financial products and services are doing the right thing. Any experience where financial misconduct is evident will erode trust in the entire financial system. Additionally, the social impact is significant, with the majority of victims seen by the CSLR losing life savings and reaching an age where it is difficult to recover financially.

The Ramsay review expressed a basic presumption available to all users of financial services, namely:

> The Panel takes as a starting point that the *Corporations Act 2001* (Corporations Act) and the *National Consumer Credit Protection Act 2009* (National Consumer Credit Protection Act) impose an obligation on licensees to have arrangements for providing compensation where certain specified losses occur. As a result, consumers and small businesses have a reasonable expectation that they will receive compensation in these circumstances
>
> There is, however, clear evidence that current arrangements are failing to meet this expectation[4].

[4] ASIC, July 2017, *Response to Supplementary issues paper: Review of the financial system external dispute resolution framework*, accessed February 2025.

The Ramsay review, along with the Hayne Royal Commission, established the need to ensure stronger support for uncompensated losses. In FY26 the CSLR expects to support over 2,000 people through 1,643 claims totaling $211m. Current forecasts also indicate this trend to continue with an anticipated 1,500 people needing support in FY27.

The social impact of financial losses was demonstrated via research carried out by ASIC[1] that found that the effects of financial misconduct and the consequential monetary loss felt by some victims led to some or all of the following outcomes[2]:

- Loss of their home, leading them to be at risk of, or experience, homelessness. Some found themselves living in a motor vehicle.
- Serious illness, either a new medical diagnosis or the aggravation of an existing illness due to excess stress.
- Going without food and avoiding using heating and cooling despite extreme temperatures.
- They found themselves embarrassed or ashamed to disclose their loss to friends and family, leading to isolation, putting them at risk of mental ill health.

# What does it mean to be a scheme of 'last resort'?

It is important to acknowledge that by the time a claim reaches the CSLR, the consumer has, in most cases, experienced a stressful, lengthy, time-consuming and sometimes expensive process to unsuccessfully recover their funds.

The impact this has on the consumers is significant, with consistent concern for mental health and financial security especially as they enter retirement.

Under the relevant legislation, CSLR has a mandatory obligation to ensure the following steps in relation to the payment of a claim:

1. an individual has received an eligible AFCA determination that remains unpaid;
2. the individual is not eligible under any other scheme; and
3. the CSLR has formed a reasonable belief that the payment will not be made by the financial firm against whom the AFCA determination was made.

The mandatory obligation to pay compensation to a person is not contingent on:

- the relevant entity making a claim against its professional indemnity insurance policy;
- private legal action being taken by a person against a relevant entity (i.e. through a Court);
- the payment of any proceeds or dividends as a result of insolvency or class action, unless specified in the AFCA determination;
- claims, or attempts to claim, against the financial firm's professional indemnity insurance policy; or
- enforcement action being taken on behalf of a person/s by a regulatory body.

# 1 A sustainable CSLR

As the operator of the Scheme, our observations aim to balance support for:

- victims of financial misconduct;
- the sustainability of funding from industry sectors; and
- the longevity of the scheme.

One of the Scheme's key responsibilities is to, with actuarial assistance, estimate the expected amount of compensation that the Scheme will be required to pay in each upcoming levy period. The estimate comprises matters prescribed by section 9 of the *Financial Services Compensation Scheme of Last Resort Levy (Collection) Act 2023 (Cth)* (**Levy Collection Act**) using a broad range of key data points, including but not limited to available information on firm failures, complaint numbers as well as other available external information.

Since its establishment, the Scheme has determined estimates for four levy periods, namely:

- the pre-CSLR levy estimate of $241m.[5]
- the first-year levy period (FY24) estimate of $4.8m[6]
- the second-year levy period (FY25) estimate was $24.1m; and
- the third-year levy period (FY26) levy is estimated at $78m, $27.9m of which is currently subject to parliamentary approval, with the remaining $50.1m to be the subject of a special levy.

The third-year levy estimate includes $70.1m related to the personal financial advice sector, $50.1 m in excess of the $20m sub-sector cap. The CSLR anticipates that the FY27 levy in respect of personal financial advice will again exceed the $20m sub-sector cap.

To provide context, Finity (the principal actuary of the Scheme), has broadly categorised firm failures in the financial advice sector into five main size groupings as set out below:[7]

- **Business As Usual (compensation + AFCA fees < $1.5m)** -The most numerous and expected to have multiple failures of this size each year
- **Material (compensation + AFCA fees of $1.5m to $3.5m)** - Expecting one such failure in a 'normal' year
- **Significant (compensation + AFCA fees in range $3.5m to $15m)** – A "significant" firm failure would be one that could be accommodated within the sub-sector cap of $20m depending on the scope of other firm failures that were to be paid during the same period
- **Major (compensation + AFCA fees in range $15m to $60m)** – A "major" firm failure would be one that would exceed the sub-sector levy cap and would require the consideration of a special levy or other cost-sharing across sub-sectors. UGC is an example of a Major financial firm failure.
- **Massive (compensation + AFCA fees that exceed $60m)** – A "massive" firm failure would be one in which it is likely that the levels of compensation and AFCA fees would require significant consideration by CSLR from a cashflow perspective and consideration from the Minister in terms of how to fund the costs associated with the failure across industry and potentially

[5] The pre-CSLR levy was paid by the ten-largest banking and general/life insurance groups by income from financial year 2021-2022, as reported by the Australian Taxation Office.
[6] This first year levy covered a period between 2 April 2024 and 30 June 2024.
[7] These definitions and ranges are not transferrable to other sub-sectors given the very different relationships between the expected average claim size and the level of AFCA fees.

including other sources of funding. Dixon Advisory and Superannuation Services (DASS) is an example of a “Massive” firm failure.

Accordingly, the estimate for FY26 and initial expectations for FY27 can largely be attributed to one “major” and one ‘massive’ financial firm failure. This was determined based on United Global Capital[8] (UGC) meeting the definition of a “major” firm failure, with an estimate of 334 successful CSLR claims, and DASS with an estimate of 1,030 successful CSLR claims meeting the definition of a “massive” firm failure.[9]

In determining the groupings below in Figure 1, Finity considered the (limited) recent history of financial failures as well as important funding boundaries in terms of CSLR’s levying powers. The frequency and size of firm failures impact the ability of the industry (in particular, the personal financial advice sub-sector) to support the CSLR based on the current funding model.

*Figure 1- Firm failure definition – personal financial advice only*

| Definition | # unpaid in-scope complaints | | Average claim $ | Compensation amount @ lower bound $ | Total AFCA fees @ lower bound $[10] | Total amount @ lower bound $ | Expected # per year* | Return period (years) |
|---|---|---|---|---|---|---|---|---|
| | Lower bound | Upper bound | | | | | | |
| ‘BAU | 0 | 9 | 125,000 | - | - | - | 4.00 | 0.3 |
| ‘Material | 10 | 24 | 125,000 | 1,250,000 | 225,000 | 1,475,000 | 1.00 | 1.0 |
| ‘Significant’ | 25 | 99 | 125,000 | 3,125,000 | 562,500 | 3,687,500 | 0.50 | 2.0 |
| ‘Major’ | 100 | 399 | 125,000 | 12,500,000 | 2,250,000 | 14,750,000 | 0.25 | 4.0 |
| ‘Massive’ | 400 | Inf | 125,000 | 50,000,000 | 9,000,000 | 59,000,000 | 0.05 | 20.0 |

The above table outlines Finity Consulting’s prediction that a “significant” firm failure is likely to occur every two years, a ‘major’ failure every four years, and a “massive” failure once every twenty years.

[8]Finity Consulting, Dec 2024, *Actuarial Report for Initial Estimate for 2025/26 (3rd Levy Period),* Report, section 5.2.
[9]Finity Consulting, *Memo to the CSLR re: personal financial advice*, February 2025.
[10] The average AFCA fee amount reflects CSLR's initial estimate, based on limited lived experience and assumptions regarding AFCA fees. CSLR is required to estimate AFCA fees ahead of AFCA determining those fees. For the FY26 levy period, this initial estimate represents CSLR's first opportunity to project AFCA fees, providing a point-in-time perspective on various factors, including the rate of determinations and discontinued complaints. CSLR anticipates that, with the passage of time from December 2024 to the preparation of its revised estimate, it will gather more data and experience related to AFCA fees. This will enable CSLR to offer a more precise estimate of the total AFCA fees for FY26.

**Based on the CSLR's observations over the last ten months, the CSLR considers the following issues require further consideration:**

1.1 Compensating for capital loss only

1.2 Limitations of professional indemnity insurance

1.3 Application of the compensation cap for "major" or "massive" firm failures

1.4 Application of the compensation cap per person versus per determination

1.5 Deductions made to compensation cap payments

1.6 Breadth of subrogation rights

1.7 Ongoing work with AFCA

We provide further details on these issues in the following sub-sections. As some of these issues are interdependent, it would be necessary to assess both the individual and collective benefits of the proposed solutions, considering the potential for consequential amendments or adjustments.

## 1.1 Compensating for capital loss only

The CSLR provides compensation in connection with a relevant AFCA determination concerning an eligible product or service. It does not distinguish between types of loss.

AFCA's approach to calculating loss in financial advice complaints has been widely published and based on legal precedent.[11]

Relevantly for financial advice complaints that are within the CSLR's scope, AFCA is required to determine "direct" loss. This is an assessment of what position the consumer would have been in had the breach not occurred and appropriate advice been provided.

Whilst acknowledging that AFCA's interpretation is based on a widely accepted and agreed legal definition, there are circumstances where this position might be considered unsustainable.

We understand that there may be cases where the capital loss component represents the majority or entirety of the loss suffered by a claimant. Accordingly, several other measures and changes should be introduced to the legislative framework in conjunction with this to improve the sustainability of the Scheme.

It is important to clarify that this recommendation does not challenge how determinations are assessed or calculated by AFCA. Instead, it focuses on the specific component for which the CSLR provides compensation as a last resort. This ensures that the integrity of the determination process remains intact while addressing the financial sustainability of the CSLR. The CSLR recognises the basis of the "direct" loss approach and the role it plays where determinations are made against solvent financial firms.

Figure 2 below demonstrates the financial impact if the capital loss method had applied to the claims received to date by the CSLR. Note that future "but for" interest amounts likely would be proportionately lower than in the claims to date due to the relatively long durations of the claims to date.

[11] The AFCA Approach to determination compensation in complaints against Financial Advice Firms where the Responsible Entity of a Managed Investment Scheme has become insolvent – January 2024; and The AFCA Approach to calculating loss in financial advice complaints – December 2023; *Patersons Securities Ltd v Financial Ombudsman Service Ltd and Ors* [2015] WASC 312.

*Figure 2: Compensation breakdown*
** does not include deductions for payments received under the DOCA or class action, or interest*
*** calculations only include claims for which 'but for' analysis was used*

| Financial Advice | # claims | # include "but for" | $ "but for" + interest | $ capital loss only[12] | $ total compensation |
|---|---|---|---|---|---|
| DASS paid | 24 | 24 | $2.93M | $240K | $3.17M |
| Other personal financial advice paid** | 93 | 54 | $2.51M | $3.64M | $6.16M |
| Credit intermediation paid** | 5 | 2 | $0 | $124K | $113K |
| Securities dealing paid** | 21 | 1 | $32K | $102K | $134K |
| DASS awaiting liquidator dividend (not paid)* | 89 | 89 | $11.23M | $670K | $11.9M |
| TOTAL | 232 | 170 | $16.7M | $4.78M | $21.48M |

**Observation**: Considering the CSLR's claims experience to date, compensating for capital loss would have had the following impact. Of the claims paid to date, 117 were related to personal financial advice. Of these 117 claims, the 'but for' test was used for 78 cases to determine the award. 5 of the claims were related to credit intermediation, of which the 'but for' test was used for 2 to determine the award. 21 claims were related to securities dealing, of which the 'but for' test was used for 1 to determine the award.

**Recommendation:** The CSLR recommends that the Scheme should only compensate for capital losses.

## 1.2 Limitations of professional indemnity insurance

The *Corporations Act 2001 (Cth)* (**Corporations Act**) mandates that AFS and AC licensees establish arrangements to compensate retail clients for losses incurred due to breaches of obligations by the licensee or its representatives[13], as outlined in Chapter 7 of the Corporations Act.

*These arrangements must either*

- include professional indemnity (PI) insurance that is deemed 'adequate' based on the nature of the licensee's business and its potential liability for compensation claims, or
- be approved by ASIC as 'alternative' arrangements.

***Inadequacy of coverage***

Whilst recognising that PI insurance is not typically designed or intended as a consumer compensation mechanism, there are several limitations to PI insurance coverage which include:

- total funds available under the insurance contract may not be sufficient to cover the full amount of compensation awarded;
- the insurance contract may exclude coverage for the specific conduct that led to the relevant AFCA determination and associated award;

[12] The AFCA determinations for DASS employ a comprehensive portfolio approach, encompassing returns from suitable and uncontested investments. This method does not isolate capital losses solely from inappropriate investments, which would otherwise be considerably higher.
[13] *Corporations Act 2001 (Cth),* Section 912B.

- there appears to be no, or very little, appetite for financial firms to make claims with their PI insurance provider in circumstances where:
    a. the relevant compensation amount may fall below the policy's excess; or
    b. making PI insurance claims for the scale of compensation claims that CSLR has already received and expects to receive could result in material increases to premiums and excess across the industry;
- claimants cannot directly claim against a financial firm's PI insurance policy, receive no information about why a claim might be refused, and have no standing to challenge any refusal; and
- claims related to financial services may arise several years after the service was provided, potentially after the firm's policy has expired, especially if "run-off" cover is unavailable or prohibitively expensive.

***CSLR scope to claim against PI insurance***

Like claimants, the CSLR does not have any ability to claim against the financial firm's PI insurance policy or powers that enable it to stand in the shoes of the financial firm for that purpose.

Although the CSLR possesses the authority to inquire about a financial firm's PI insurance policy, it lacks the power to compel the firm or an insolvency administrator to make a claim or to claim on its own behalf.

It would seem appropriate for investigations to be conducted by ASIC to ensure greater transparency around the PI arrangements for licensees. This issue was considered by ASIC in 2017[14] where it proposed that such data could be instrumental in monitoring the extent of PI insurance coverage, especially with the introduction of the CSLR.

***CSLR experience***

Of the 56 financial firms[15] against which compensation claims have been made with the CSLR, only one financial firm has made a concerted effort to access their PI insurance. A summary of our experience with the entity is set out below.

> *The CSLR received nine claims relating to Company A. These claims relate to six unique AFCA determinations. The determinations relate to complaints made to AFCA between October 2019 and January 2022, with decisions issued by AFCA between June 2021 and June 2023.*
>
> *The decisions were all in favour of the claimants, with the award amounts varying between $125,000 and approximately $500,000. Three of these determinations had received partial payment from Company A of $25,000 each (i.e. $75,000 total) in July 2022.*
>
> *Company A advised the CSLR in writing that these payments represented their excess under their professional indemnity insurance. Company A's claim for indemnity under its applicable professional indemnity insurance policy was denied by its insurer, AIG. Company A (through its solicitors) challenged this outcome. AFCA, ASIC and the CSLR have been kept informed of these matters.*
>
> *Of the nine claims, six are within the scope of the CSLR. Five of the six claims would be capped at $150,000, with one claim at approximately $100,000.*

[14] ASIC, July 2017, *Response to Supplementary issues paper: Review of the financial system external dispute resolution framework*, accessed February 2025.
[15] Data as at 31 January 2025.

*The CSLR engaged with Company A following the lodgement of the claims to determine whether they had the ability to pay the claims in full. By late May 2024, after a protracted dialogue between Company A and its insurer (AIG), an agreement was reached to resolve the insurance dispute resulting in funds being made available to pay the relevant AFCA claims.*

*To date, two in-scope and one out-of-scope determinations have been paid in full. One has commenced a six-month payment plan to be paid in full, and one is in the final stages of negotiating the terms of a deed of agreement.*

*Three claims were resolved in November 2024. Two further claims were resolved in January 2025, while the deed of agreement is still being negotiated for one final claim.*

*It is important to note that claimants have been paid in full. For the four determinations that have been paid in full or currently receiving payments, the determination amount to a total of value is $1.46m. This represents over $1m more in compensation than had they received compensation payments from the CSLR. This is an example of a financial firm taking accountability and therefore retaining their AFSL as a consequence of the CSLR not having to make any compensation payments.*

**Recommendation:**

Ensuring that AFS and ACL licensees have access to affordable and adequate PI insurance is crucial for enhancing consumer protection and maintaining the long-term sustainability of the CSLR. Based on its experience, the CSLR suggests the following improvements to enhance consumer outcomes and reduce the number of compensation claims:

- mandating AFS licensees to hold PI insurance with appropriate coverage limits and appropriate provisions for addressing AFCA complaints;
- having minimum levels of PI coverage scalable to the financial firm size;
- requiring insolvency administrators, subject to policy terms, to apply for PI insurance coverage to settle AFCA claims; and
- enhancing PI insurance coverage to bolster the financial stability of AFS licensees, thereby reducing the incidence of firm failures and the volume of claims submitted to the CSLR.

These measures would strengthen the overall framework, ensuring better protection for consumers and a more resilient financial services sector.

## 1.3 Application of the compensation cap for “major” or “massive” firm failures

Although the CSLR considers the $150,000 compensation cap to be reasonable, it recognises the impact of the cap on “major” or “massive” financial firm failures, as defined on page 8 of this submission.

**Recommendation:**

That the Minister has the authority to impose a lower compensation cap for a particular class of claimants or particular firm failures.[16] For example, when a “major” or “massive” financial firm failure

[16] Similar to the power expressed in Australian Government Department of Treasury, 2021, *Proposal Paper: Compensation Scheme of Last Resort – Financial Services Royal Commission Recommendation 7.1.*

occurs, the Minister would have the ability to alter the compensation cap applicable.

## 1.4 Application of the compensation cap per person versus per determination

The $150,000 compensation cap applies at a per-person/entity level. In circumstances where there may be multiple claimants (individuals and entities, such as a self-managed superannuation fund) for a relevant AFCA determination, there are likely multiple claims being made in relation to a single AFCA determination.

Further, a person may get the benefit of multiple lots of $150,000 if there is a determination in favour of them in a personal capacity and in favour of a corporation or trust of which they are a shareholder or beneficiary.

To illustrate we refer to the below hypothetical scenarios.

**Scenario 1**:
AFCA considers that the financial firm's conduct has caused loss or damage to both Mr Smith in his personal capacity and Mr Smith's Self-Managed Superannuation Fund (SMSF) (of which he is the sole member/beneficiary). The AFCA determination requires that:

- $300,000 be paid to Smith Pty Ltd (Mr Smith's SMSF)
- $300,000 be paid to Mr Smith personally.

Each can approach the CSLR for compensation up to the cap of $150,000 (i.e. Smith Pty Ltd receives $150,000 in compensation and Mr Smith receives $150,000 in compensation). Noting that the SMSF is a vehicle for holding Mr Smith's retirement savings, this would result in Mr Smith receiving the benefit of double the cap, a benefit he would not have had if he had suffered all the loss or damage either inside or outside of his SMSF, or if the Determination had been expressed differently (as per Scenario 2).

**Scenario 2:**
AFCA considers that the financial firm's conduct has caused loss or damage both to Mr Hudson in his personal capacity and to Mr Hudson's SMSF (of which he is the sole member/beneficiary). AFCA determination requires that:

- $200,000 be paid to Mr Hudson's nominated superannuation account;
- $200,000 be paid to Mr Hudson personally

Mr Hudson is the person entitled to payment in both (even though one of the payments is to be made to a superannuation account instead of to him personally). Accordingly, Mr Hudson can only approach the CSLR for compensation up to the single $150,000 cap (to be paid either to Mr Hudson personally or to Mr Hudson's superannuation account at Mr Hudson's election).

**CSLR observation**: Of the 151 claims paid to date by the CSLR, 20 AFCA determinations have resulted in a compensation payment that exceeded $150,000. Total compensation paid on these determinations totalled $4.2m with an average of $210,000 per determination. If this were capped at $150,000 per determination this would have resulted in total compensation of $3m.

**Recommendation:**

The $150,000 compensation cap should be applied on a beneficial entitlement basis. This means that each individual affected by an AFCA determination would have the right to make a compensation claim and receive compensation up to the cap. Consequently, if individuals are beneficiaries of a self-managed superannuation fund, each beneficiary would be entitled to receive an amount up to the compensation cap. In this case, the self-managed superannuation fund itself would not be entitled to make a claim with the CSLR.

An alternative to the above is for the $150,000 compensation cap to be applied at a determination level rather than a per-person level

Additional considerations that would flow from adopting either of the above approaches to the $150,000 include:

- the methodology to be used to apportion the $150,000 compensation payment between multiple claimants (e.g. pro rata, by agreement between the claimants);
- how to treat any joint entitlements to compensation; and
- if there are multiple recipients under a single determination, whether all of them need to apply for a compensation payment to be made or whether a single recipient can unilaterally apply.

The methodology for calculating the amount of compensation payable under section 1067 of the Act would preferably be redrafted to account for these issues.

## 1.5 Deductions made to compensation payments

The CSLR was designed to be a scheme of last resort. The current legislation allows compensation payments to be reduced for any part previously paid in accordance with the AFCA determination;

a. for an amount payable under any other statutory scheme; or

b. for an amount of a type specified in regulations.[17]

No regulations have been made. Accordingly, there is no express basis to reduce compensation to consider amounts paid to a claimant outside of the terms of the relevant AFCA determination for matters covered by the determination, such as through a class action, deed of company arrangement (DOCA) or from insurance proceeds.

**Recommendation:**

Regulations should be made to allow the CSLR to reduce a compensation payment to take account of:

a. any amount paid to the person in connection with the matters covered by the AFCA determination in any capacity, including an insurance payout or a class action settlement;

*and*

b. the value of the retained assets (where the assets were required by the AFCA determination to have been transferred to another entity).

[17] *Corporations Act 2001 (Cth)*, Section 1067

## 1.6 Breadth of subrogation rights

Subrogation can be described as the substitution of one party for another party in respect of the second party's rights or claims. The purpose of subrogation, or one party stepping into another's place in a legal or financial obligation, is to ensure that the obligation or debt is ultimately paid by the party who should, by all that is fair, pay it. Relevantly for the Scheme, under section 1069A of the Corporations Act, subject to the CSLR paying compensation and the relevant AFCA member having become a Chapter 5 body, the CSLR

> *"is **subrogated, to the extent of that amount of compensation**, to any rights and remedies that the person may have, in relation to the relevant AFCA determination, that are recognised by an officer of the Chapter 5 body corporate"* (**emphasis** added)

In practice, this means:

- the claimant no longer has any rights or remedies against the relevant entity for the amount of compensation they are paid by the CSLR for the relevant AFCA determination;
- the claimant's rights and remedies against the relevant entity (for the amount of compensation paid) are transferred to the CSLR, which means that the CSLR may be able to recover some or all of the compensation paid by the CSLR from the relevant entity (for example, as an unsecured creditor in insolvency); and
- if the relevant AFCA determination exceeds the amount of compensation paid by CSLR, the claimant retains their rights and remedies against the relevant entity for the excess.

The purpose of this provision is to enable the CSLR, in certain circumstances, to recover some or all the compensation paid on behalf of the relevant entity. It is also intended to prevent situations where the consumer is paid more than the amount specified in the relevant AFCA determination, receiving a compensation payment under the CSLR and a payment as a creditor to an insolvency process.

To date, the CSLR's experience in exercising its subrogation rights has been limited, noting that any amounts that may become available in the future (in the form of dividends in a liquidation or external administration) will be at the conclusion of the liquidation/administration process (i.e. take months/years) and will likely amount to cents on the dollar. This also assumes that the relevant Chapter 5 body corporate recognises CSLR's subrogation rights and does not dispute the claim by the CSLR.

For completeness, the CSLR has submitted proof of debt claims in line with its subrogation rights in respect to all compensation payments it has made up to the date of this submission. To date, it has received one distribution of $18,129.33.

Based on its current experience, the CSLR considers its current subrogation rights to be limited for the following reasons:

- there is a risk that a Chapter 5 body corporate may not 'recognise' the CSLR's subrogation right and therefore not admit claims it makes in connection with compensation payments;
- the CSLR's right of subrogation does not empower it to make claims against a financial firm's insurer (i.e. professional indemnity insurer) or compel a Chapter 5 body corporate to make claims on the CSLR's behalf;
- The CSLR does not have a right of subrogation against:
    - a recalcitrant AFCA member who is an individual or partnership; or

- a recalcitrant corporate financial firm which does not or has not yet become a Chapter 5 body.

The CSLR expects the issue regarding the lack of recognition of the CSLR's subrogation rights may remain an issue for external administrations that commenced prior to the CSLR's establishment. For example, a deed administrator may take a view that the methodology for assessment of loss (which would have been determined before the CSLR's existence or the time that the CSLR received a compensation claim concerning the relevant financial firm) under a DOCA is sufficiently different to the methodology adopted by AFCA in its determination, resulting in CSLR's claims not being recognised by the deed administrator.

In other words, the CSLR's subrogation rights are confined to the rights and remedies "in relation to the relevant AFCA determination"[18], which are not necessarily the rights and remedies under the DOCA. Further there is no subrogation to rights and remedies under the DOCA unless they are "in relation to the relevant AFCA determination".

The CSLR will continue to make all reasonable efforts to participate in early discussions with deed administrations in relation to the development of loss methodologies and how participating creditors might be defined.

**Recommendation:**

Expand the CSLR's subrogation rights such that the CSLR fully stands in the shoes of the complainant, including rights to pursue:

- a Financial Firm's insurer (including in respect of insurance of a general compensatory nature);
- a recalcitrant AFCA member who is an individual or partnership;
- a recalcitrant corporate Financial Firm which has not yet become a Chapter 5 body.

The proposed amendment would be to adopt a broader subrogation right which provides that, if compensation in respect of a claim is paid by the CSLR, the Scheme is then subrogated, to the extent of that payment, to all the claimant's rights and remedies concerning the loss to which the claim relates (even if those rights are not against a Chapter 5 body corporate or are not recognised by an officer of a chapter 5 body corporate).

The UK's Financial Services Compensation Scheme (FSCS) has a significantly broader subrogation right, where it can be unilaterally subrogated all or any part (as determined by the FSCS) of the rights and claims in the United Kingdom and elsewhere of the claimant against the relevant person (or, where applicable, a successor) and/or any third party. This applies whether such rights are legal, equitable or of any other nature whatsoever and in whatever capacity the relevant person (or, where applicable, a successor or third party) is acting in respect of or arising out of the claim in respect of which the payment of or on account of compensation was made.[19]

In an Australian context, the Securities Exchange Guarantee Corporation also has a broader subrogation right.[20] If compensation in respect of a claim is paid by the SEGC, the SEGC is then subrogated, to the extent of that payment, to all the claimant's rights and remedies in relation to the loss to which the claim relates.

In the context of the Fair Entitlements Guarantee, the Commonwealth is also subrogated to rights against employers who are individuals and partnerships (and not just Chapter 5 bodies corporate).

Changes such as these would improve the CSLR's existing subrogation right by:

[18] Section 1069A of the *Corporations Act 2001 (Cth)*
[19] Chapter 7, *UK Financial Conduct Authority Handbook,* rule 7.3.8.
[20] *Corporations Act 2001 (Cth)*, Section 892F

- expanding the category of rights to which the relevant body may be subrogated by removing the limitation that the right must be against a Chapter 5 body corporate. This would include any claims as against, without limitation, an individual, a partnership or a company that is not a Chapter 5 body corporate;
- removing the requirement that the relevant rights or remedies be recognised by an officer of a Chapter 5 body corporate (which significantly limits the situations in which, for example, the CSLR could seek to subrogate itself to insurance proceeds);
- Only requiring the rights to which the body is subrogated to be linked to the factual substratum of the complaint (or the loss to which the claim relates), rather than being in relation to the AFCA determination itself.

The CSLR considers AFCA has a role to play in this regard to ensure its determinations are recognised by deed administrators so that the CSLR maximises opportunities to see returns (albeit small) through the exercising of its subrogation rights.

Notwithstanding the above potential solutions, it should be noted that the CSLR's experience to date is that there does not seem to be material funds available in the administration/liquidation process that would result in material returns to the CSLR as an unsecured creditor.

## 1.7 Ongoing work with AFCA

CSLR is tasked with estimating AFCA fees for each levy period, utilising the information available at the time the initial estimate is determined. The estimate for AFCA fees for the FY26 levy period is detailed in the Actuarial Report for FY25 Levy Period.[21] The average AFCA fee amount reflects CSLR's initial estimate, based on limited lived experience and assumptions regarding AFCA fees. CSLR is required to estimate AFCA fees ahead of AFCA determining those fees. For the FY26 levy period, this initial estimate represents CSLR's first opportunity to project AFCA fees, providing a point-in-time perspective on various factors, including the rate of determinations and discontinued complaints.

CSLR anticipates that, with the passage of time from December 2024 to the preparation of its revised estimate, it will gather more data and experience related to AFCA fees. This will enable CSLR to offer a more precise estimate of the total AFCA fees for FY26.

The CSLR continues to share operational learnings that have arisen since it commenced operations. The Scheme supports AFCA's ongoing efforts to enhance efficiency and establish optimal fee structures while recognising the necessity for AFCA's cost recovery given it is a not-for-profit entity.

We recognise these are matters for AFCA to work through and the CSLR will continue to support these efforts whilst at the same time being transparent on their impact on levy estimates.

**Recommendations:**

Similar to the recommendation made in section 1.3, it may be appropriate for the Minister to provide carefully considered directions and permissions to AFCA enabling it to streamline its processes for large-scale failures with high volumes of complaints that have similar characteristics.

[21] Finity Consulting, Dec 2024, *Actuarial Report for Initial Estimate for 2025/26 (3rd Levy Period),* Report, pages 49 and 50.

# 2 Support for victims of financial misconduct

The Ramsay Review[22] identified shortcomings in the dispute resolution process and that some key protections for victims of financial misconduct were required for a fully functional consumer protection framework. The inclusion of this would ensure confidence in the financial system within which it operates. The report highlighted,

> "*A well-functioning system for resolving disputes within the financial system is essential for safeguarding consumer trust and confidence and for ensuring the system is meeting the needs of its users…*
>
> *There is, however, clear evidence that current arrangements are failing to meet this expectation, with some consumers and small businesses not receiving compensation that has been awarded by an EDR [external dispute resolution] body.*
>
> *… the majority of financial firms comply with their legal obligations and compensate their customers where required. Nevertheless, the Panel also recognises that while unpaid determinations represent a very small proportion of total EDR determinations the impact on consumers and small businesses can be significant and can erode confidence in the dispute resolution processes and the financial system more broadly.*"

Following the passing of the CSLR legislation, the CSLR's actuaries, with the assistance of AFCA, identified 1914 potential complaints across 58 organisations that may be eligible for compensation. Initial observations from submitted claims confirm a majority of victims have lost significant life savings and reached an age where it is difficult to financially recover.

CSLR claim experts have spoken at length to claimants about their circumstances and what led them to CSLR claim eligibility. Many of these people have spent years seeking compensation for their losses due to misconduct and the advent of the CSLR has finally allowed these people to close a stressful and costly chapter of their lives.

The CSLR's approach to suitable protections has been balanced between ensuring basic protections are available to the victims of financial misconduct with what it means to be a compensation scheme of last resort. As a scheme of last resort, our role is not to fully compensate for all losses; there are limits to the available compensation including a cap of $150k.

Below are examples of claimants' experiences across the four sub-sectors that the legislation allows us to pay compensation on.

[22] Australian Government, Department of Treasury, 2017, *Review into Dispute Resolution and Complaints Framework, Supplementary Final Report.*

**Personal financial advice story – Jeff***

*Jeff is in his sixties, from rural Queensland. Due to a debilitating back injury, Jeff found himself unable to work. He engaged Mr R* to assist him in making a Total and Permanent Disability (TPD) insurance claim. Jeff was awarded just over $1m.*

*Jeff went on to engage Mr R for financial advice. Mr R recommended Jeff borrow funds to buy a home and use the TPD payout in small amounts from his superannuation account to make repayments.*

*Given the trusting relationship that Jeff had with Mr R, he allowed Mr R to manage his mortgage repayments. As a result, between 2015 and 2018, Mr R withdrew over $440,000 from Jeff's superannuation and deposited these funds into Mr R's company and personal accounts. As far as Jeff was aware, his mortgage was being paid.*

*In 2017, Jeff received default notices for his mortgage and sought clarification from Mr R who informed him he would take care of the outstanding payments.*

*In 2019, Jeff was served a writ of possession for his property as the mortgage was not being paid.*

*In 2020, AFCA found in favour of Jeff, awarding him over $490,000. He lodged a claim with CSLR in 2024 and received a payment of $150,000 in compensation.*

*name has been changed.

**Securities dealing story – Ralph***

*Between April and July 2017, Melbourne man, Ralph was advised by a securities dealer to acquire shares in two companies via 3 x $50,000 acquisitions.*

*These particular securities should not have been recommended to Ralph, as they were only intended to be made available to sophisticated investors.*

*Ralph was inappropriately classified as a sophisticated investor and therefore found himself ineligible to receive the offers made by the financial firm to invest in the disputed securities.*

*In March 2024, Ralph was awarded $150,000 plus interest by AFCA, with CSLR paying $150,000 compensation in August 2024.*

*name has been changed.

**Credit provision story – Ruby***

*Ruby lodged a complaint with AFCA in February 2022 regarding the provision of a loan that had been taken out in her name for $13,000 over a 7-year term. This loan was taken out for the purpose of purchasing a van for her ex-partner.*

*Throughout Ruby's relationship with her ex-partner, she was the sole breadwinner and provided financially for her ex and her young children.*

*AFCA found that there were clear vulnerabilities outlined by Ruby in her claim, that ultimately amounted to her being coerced by her ex-partner into taking out the loan. The complaint outlined a history of family violence, in particular financial abuse and coercive control over the course of their relationship.*

*At the time of the loan application, Ruby's ex-partner was unemployed. Her income was stretched to cover all the cost-of-living expenses for her family without any additional financial assistance. A representative of the lender in question did not take the time to ask Ruby for any information to verify her income and completed the loan application with inaccurate information pertaining to Ruby's financial position.*

*It was found that had the lender taken all appropriate steps during the loan application process, they likely would not have approved the loan on the grounds of current financial hardship and the likelihood that Ruby would fall behind on repayments.*

*AFCA found in favour of Ruby, and determined the firm should compensate her for the net financial loss the unsuitable loan caused her.*

*Ruby went on to lodge a claim with the CSLR for $22,000 for the loan amount and for non-financial loss.*

*In addition to this, AFCA also instructed the firm to contact all the credit reporting bureaus and have information from Ruby's file amended to remove any adverse payment history that could impact her ability to access finance in the future.*

**name has been changed.*

**Credit intermediation story– Meredith and Richard***

*Meredith and her husband Richard are a couple in their late forties.*

*Meredith and Richard advised AFCA that they had a personal relationship with a broker, who also provided them with property purchase and accounting services.*

*In 2018, the broker advised them to sell their property in NSW and relocate to Queensland where they purchased two properties taking out loans totalling almost $1m*

*The couple approached AFCA in the latter half of 2020 with concerns they had been given poor advice, and that the broker had not properly considered their financial situation prior to broking their loans.*

*They found themselves in severe financial hardship and soon were in arrears on their home loans. This caused them immense stress, which became worse once they had exhausted their bank's hardship support.*

*In February 2023, AFCA awarded the couple a total of $54,000. Meredith and Richard made a claim with the CSLR and were paid their full award in May 2024.*

**names have been changed.*

**Considering the desire to ensure appropriate support for victims of financial misconduct, and based on CSLR's observations over the last ten months, CSLR considers the following issues require further consideration.**

2.1 Use of paid representatives by claimants

2.2 Unintended consequences of legislation on unique claimant scenarios

2.3 Reasonable belief of non-payment

**We note that some of the above issues are interdependent. Therefore, it will be necessary to assess both the individual and collective benefits of the proposed solutions, considering the potential for consequential amendments or adjustments.**

## 2.1 Use of paid representatives by claimants

The CSLR is not in a position to reject a paid representative from lodging a claim.[23]

The majority of the CSLR's experience with paid representatives has been positive, however it has encountered instances where paid representatives have not acted in accordance with the best interests of a claimant and/or charged for services that are provided by the scheme at no cost (i.e. assistance with navigating the claims process).

> **Case example 1:** The CSLR has dealt with a limited number of paid representatives to date. CSLR has previously received a request for a compensation payment to be paid directly to the representative. The Scheme denied this request, making payment to the claimant.
>
> **Case example 2:** The CSLR has also received one claim for compensation from a paid representative which the claimant had not authorised. The CSLR closed the claim at the claimant's request and revoked the representative's authority to act on behalf of the claimant.

**Recommendation:**

It would be appropriate for the CSLR to have a power like that granted to AFCA[24], which enables AFCA to exclude certain paid representatives from preparing or lodging applications on behalf of claimants where certain criteria are met.

There are several models which could be considered, including:

- a statutory bar on all applications by representatives (other than solicitors or similar kinds of advocates); or
- a discretion for the CSLR to exclude certain paid representatives from preparing or lodging applications on behalf of claimants where it considers it necessary or reasonable to do so; *or*
- an exact mirror of AFCA Rule B.6

[23] *Corporations Act 2001 (Cth)*, Section 1065
[24] 2024, Australian Financial Complaints Authority (AFCA), *Complain Resolution Scheme Rules*, rule B.6.

## 2.2 Unintended consequences of legislation on unique claimant scenarios

### Impact of awards in favour of deregistered entities and wound-up self-managed super funds (SMSF)

Compensation is only ever due to the person entitled to be paid in accordance with a relevant AFCA determination. Practical difficulties arise when compensation is due to a defunct entity (i.e. deregistered corporate entities and corporate trustees of SMSF's or wound-up SMSF's).

**Awards in favour of deregistered corporate entities**

The CSLR has encountered several claims with AFCA determinations where awards have been made in favour of a corporate trustee for a SMSF. However, complications arise when the corporate trustee has been deregistered.

The CSLR lacks the discretion under the legislation to deviate from the terms of the AFCA determination. Under the Corporations Act[25], any money owed to a deregistered company in its capacity as trustee for a trust or superannuation fund vests with ASIC. Consequently, the Scheme is obligated to transfer compensation payments to ASIC's Unclaimed Monies team. The ultimate beneficiaries of the SMSF are then required to request these funds from ASIC.

This process is notably cumbersome and lengthy for claimants, many of whom have already endured several years seeking resolution from the financial firm, followed by AFCA, and now CSLR. The additional step of engaging with ASIC's Unclaimed Monies team further prolongs their wait for compensation.

A similar issue arises in relation to claims with AFCA determinations where awards have been made in favour of a corporate entity that has since been deregistered.[26]

**Awards in favour of wound-up self-managed superannuation funds**

Where claims are made with AFCA and a determination finds in favour of a SMSF with individual trustees, and that SMSF has since been wound up, this can present complications for the CSLR.

Given the passage of time between the time the AFCA determination was issued and the time a claim is made with the CSLR, it often results in claimants not being in possession of relevant documentation (e.g. trust deeds, SMSF tax returns and other documents) and results in the Scheme experiencing challenges and delays identifying beneficiaries and ultimately making compensation payments.

**Recommendation:**

The CSLR recognises the need for a more streamlined and efficient process to alleviate the burden on claimants. It is recommended that consideration be given to potential adjustments and procedural improvements to expedite the resolution of claims and provide the Scheme with sufficient discretion to, in appropriate circumstances, deviate from the terms of the AFCA determination, particularly concerning the direction of compensation payments.

[25] *Corporations Act 2001 (Cth),* Section 601(AD)(1A).
[26] *Corporations Act 2001 (Cth),* Section 601AD(2).

### Single lump sum payments

Under the legislation, the CSLR is required to pay a single lump sum of compensation, and the legislative framework is unclear on how compensation is to be paid to joint complainants who do not agree on how the compensation is to be apportioned between them.[27] Accordingly, the CSLR is prevented from paying compensation into two or more accounts at the request of a claimant/s.

The CSLR's current pragmatic approach is to assume joint entitlements are shared equally unless they receive written instructions from claimants on how to divide the compensation. If a joint account cannot be used, the CSLR will ask for joint written instructions with the correct account details.

> **Case example:** It was determined that compensation was to be paid to the beneficiaries of a trust, including in respect of a member who is now deceased. The determination required the beneficiaries to collectively confirm with the financial firm the fair proportionate split. Due to insufficient records being provided to the firm's administrators, they were unable to undertake that assessment. In consultation with AFCA, it was agreed that CSLR discuss with the beneficiaries and agree upon a proportionate split.

**Recommendation:**

A solution to this issue would be to include a requirement that all joint holders must apply for compensation together or separately or waive their right to claim before the CSLR has to offer compensation.

This would ensure the CSLR does not make separate payments to joint owners, clarifying that this is not an option. If one joint holder does not apply and it could cause unfairness (like in a family breakdown), the CSLR should have the power to include the other joint owners in the application to prevent this.

## 2.3 Reasonable belief of non-payment

Part of the CSLR's eligibility assessment for claimants who apply for compensation involves the CSLR forming a reasonable belief that a claimant is unlikely to be fully paid the amount in accordance with the relevant AFCA determination.

Consistent with its efforts to raise consumer confidence in the industry, the CSLR acknowledges that there may be instances where financial firms are making genuine attempts to pay amounts in accordance with the relevant AFCA determination. In those circumstances, the Scheme is keen to work with financial firms and claimants to ensure the full amount under the AFCA determination is paid by the financial firm, which benefits consumers and avoids the mandatory cancellation of the financial firm's license by ASIC.

The CSLR's assessment of 'reasonable belief' is dependent on a range of facts and circumstances including, but not limited to, the following matters:

- the length of time for which the AFCA determination remains outstanding;
- the individual circumstances of the claimant;
- the financial position of the financial firm;
- the steps taken by the financial firm to pay the amount owing under the AFCA determination;

[27] *Corporations Act 2001 (Cth),* Section 1063(2).

- whether there are events in train which appear reasonably likely to result in the full amount owing under the AFCA determination to be paid; and
- any previous failure by the financial firm to meet agreed payment plans.

The CSLR may request evidence in relation to any of the above and may look to independently verify information where appropriate.

The CSLR has experienced several of these requests. A number of those instances have resulted in the claimant withdrawing their claim for compensation as they were able to receive the full AFCA determination, well above what they would have received had a claim been paid at the $150,000 cap.

There have also been examples where the claimants are receiving smaller payments from a financial firm over a protracted period. In these cases (i.e. where payments, albeit small, are being made), the CSLR takes care in balancing the length of time a claimant will have to wait to receive their compensation and the consequences for the financial firm if the CSLR makes a compensation payment.

When the CSLR pays compensation to an eligible consumer in relation to an AFCA determination and notifies ASIC of the details of the firm that failed to pay the compensation, ASIC must cancel the AFS license or credit license of the firm.

> **Case example 1:** An AFCA determination required the firm to pay $96,600. The firm had sporadically paid $15,000 over the approximately 2-year period prior to the claim being lodged with the CSLR in April 2024. The firm commenced regular weekly payments of $1,000 per week, which have recently increased to $2,000 per week, with an expected resolution expected in the next 6 months.
>
> **Case example 2:** An AFCA determination required the firm to pay $127,650. The firm had made $16,302 in payments prior to the claim being lodged with the CSLR in April 2024. The firm made an initial payment of $25,000 in July 2024 and commenced regular monthly payments of $10,000, with an expected resolution in the next 2 months.

**Recommendation:**

The CSLR be given appropriate powers to compel a financial firm (or external administrator) to access its professional indemnity insurance to make the payment. This recommendation should be read in connection with section 1.2 of this document.

# 3 Challenges and shortcomings of the current CSLR funding structure

The CSLR is funded by a levy on four defined sub-sectors of the financial services industry, specifically: credit intermediaries, credit providers, licensees providing financial advice, and securities dealers.

In implementing the funding process, the CSLR has encountered situations that limit its ability to receive levy funds in a timely manner ensuring victims of financial misconduct are compensated appropriately.

The legislative framework outlines three different levies that can be used to fund the CSLR.

**Annual levy**

The CSLR is primarily funded through annual levies on the four defined sub-sectors of the financial services industry. As per the CSLR legislation, the annual levies are capped at $20m  per sub-sector.

**Further levy**

In addition to the annual levy collected for a sub-sector, a further levy may be issued for the same levy period if the CSLR determines that the total costs are likely to exceed the original estimate. This can occur if there are, or are expected to be, insufficient funds to cover claims, fees, and costs. As per the CSLR legislation, the combined amount of the annual and further levies imposed on a sub-sector for a levy period cannot exceed $20m.

**Special levy**

Where the CSLR's initial cost estimate for a sub-sector exceeds the $20m cap, ASIC can only issue the annual levy based on the $20m cap. Before a special levy can be issued, the CSLR must complete a revised estimate of claims, fees and costs for the relevant levy period. For the 2025-26 levy period, the instrument for the revised estimate can only be registered after 1 July 2025. If the revised estimate exceeds the $20m sub-sector levy cap, the CSLR legislation contains a special funding mechanism called a special levy which involves a ministerial determination.

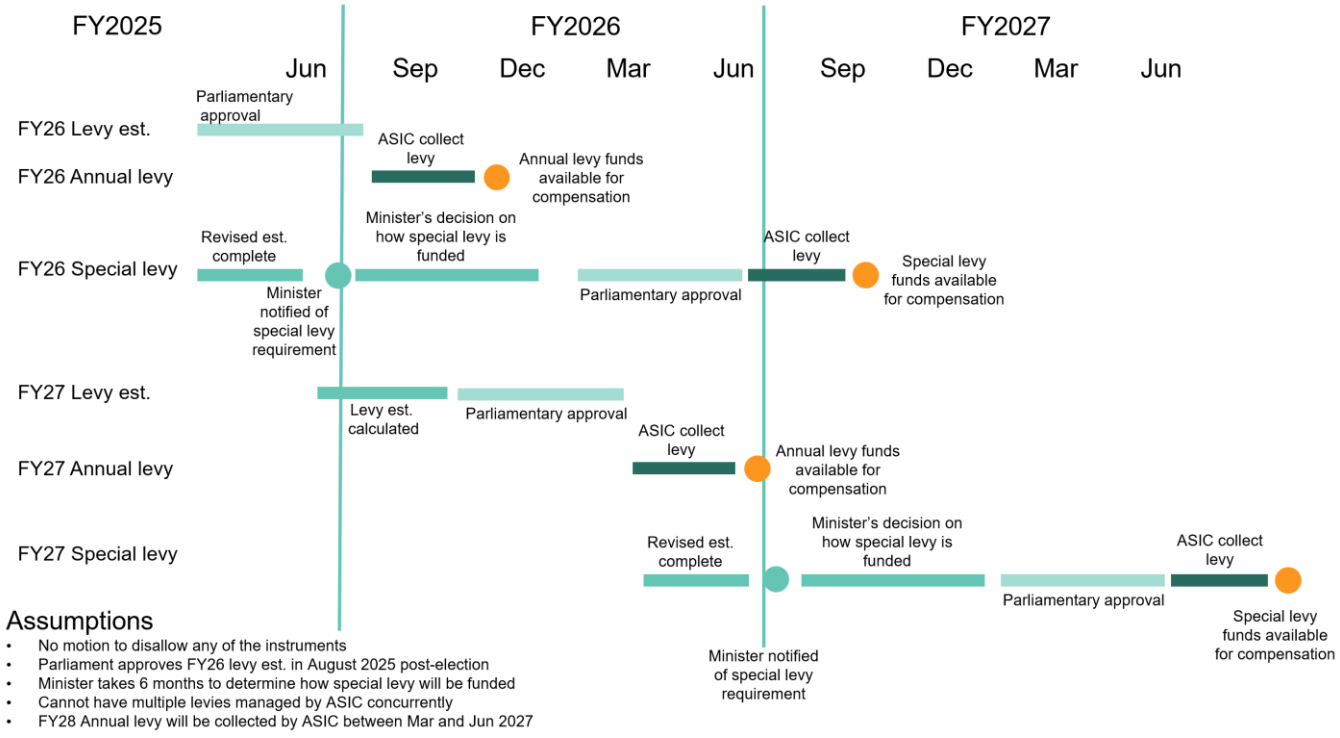
The Minister has the discretion to apply the special levy, including to whom the levy applies (including sub-sectors beyond the four defined sub-sectors) and the amount of the levy. This decision is subject to a parliamentary disallowance process. The method for calculating an individual entity's levy is set out in the *Financial Services Compensation Scheme of Last Resort Levy Regulations 2023*.

The total value of the annual, further and special levies cannot exceed the scheme levy cap of $250m for a leviable period.

The scheduled levy activity during FY26 and FY27 is outlined in Figure 7 below. The schedule highlights the various CSLR levy challenges from the preparation of a levy through to funds being received.

The challenges are further highlighted in the observations in the remainder of Section 3 of this document. These challenges include the sequencing and time taken to complete the activities, the complexities of a special levy and the impact on industry of the number and size of levies.

*Figure 7: CSLR concurrent levy estimate timeline FY26 and FY27*




**Based on the CSLR's observations over the last ten months, the CSLR considers the following issues require further consideration.**

3.1 A parliamentary disallowance period that can require multiple parliamentary sitting periods

3.2 Impact of levy cap

3.3 Inefficient special levy process

3.4 Impact of reserve and time taken to replenish

3.5 Reconciliation for pre-CSLR levy estimate

3.6 Levy for deregistered or ceased members

As some of the above issues are interdependent, it would be necessary to assess both the individual and collective benefits of the proposed solutions, considering the potential for consequential amendments or adjustments.

## 3.1 A parliamentary disallowance period that can require multiple parliamentary sitting periods

Before ASIC can invoice levies, parliamentary approval is required via the following steps:

1. The estimate is registered on the Federal Register of Legislation as a legislative instrument alongside an explanatory memorandum;

2. The legislative instrument is tabled in each House of Parliament with a 15-day disallowance period[28];
3. Once the disallowance period has concluded, ASIC determines the levy portion for each financial firm using the 2023-24 Industry Funding business activity metrics to calculate the leviable amounts for the 2025-26 CSLR levy period.[29] The method for calculating an individual entity's levy is set out in the *Financial Services Compensation Scheme of Last Resort Levy Regulations 2023*.

The elapsed time experienced in respect of the FY25 levy (levy period 2) is outlined in Figure 8 below to demonstrate the time taken from tabling the estimate in Parliament to the receipt of funds by the CSLR. The total elapsed time to receive the annual levy from its initial tabling in Parliament was just over six months.

*Figure 8: CSLR initial levy estimate process – non-election year – timeline*


Recognising that there is a high degree of uncertainty with forward-looking estimates, particularly with immature data given the newness of the Scheme and variable components, timing delays can cause unintended cashflow consequences for the CSLR as well as delays in claimants receiving compensation payments.

The use of a special levy to fund levies in excess of the $20m sub-sector cap is expected to add an additional 12-month process between the completion of a revised estimate, a decision by the relevant minister, the legislative approval process and the levy distribution and collection process.

Figure 7 on page 26 above shows estimated timing implications for the current FY26 levy before Parliament and the expected FY27 levy.

Based on the current legislated process, the following challenges are expected to be experienced,

- The FY26 annual levy is expected to be received in November 2025, resulting in possible delays in compensation payments between the 1 July 2025 start of the levy period and November 2025.
- The FY26 special levy cannot be requested until the 1 July 2025 commencement of the levy period and, with no time requirement for the Minister to decide on how the special levy will be funded, the special levy funds would likely not be received until after FY26. This would mean that compensation payments that were eligible to be paid in FY26 would not be paid until FY27 or later.
- Whenever there is a need for a special levy, there may be multiple levies within a financial year for the relevant sub-sector, depending on the ministerial decision on how the special levy will be funded.

*Additional events that can impact the available sitting days:*

- The calling of a Federal election ceases sitting days from the moment the election is called until the new government is formed and the new parliamentary sitting days commence. Based on the average timelines of the previous five elections, this result in a delay of over three months.
- When a parliamentary sitting day does not finish until after 12am, a sitting day is automatically lost.
- The removal of sitting day/s. The CSLR experienced this with the FY25 levy process.

[28] *Legislation Act 2003 (Cth)*, Section 42.
[29] *ASIC (Supervisory Cost Recovery Levy—Annual Determination)* Instrument 2024/822*; ASIC (Financial Services Compensation Scheme of Last Resort Levy—Return Deadline) Notice 2024/408.*

The longer the time between preparation of an estimate and receipt of levy funds, the greater will be the variability of the estimate (prepared eleven months prior to the start of a financial year) to actual requirements. This is due to greater reliance on assumptions and the potential for excluding relevant events that will occur prior to the levy funds being received.

> **Case example**: When the FY25 levy estimate was completed, the CSLR was not aware of any potential claims relating to UGC. The CSLR received the first UGC claims in January 2025, and it is estimated that a significant proportion of UGC claims will not be paid until the FY26 special levy funds are received in August 2026 (or later), some 18 months after the first UGC claims have been lodged with the CSLR.

**Recommendation:**

The CSLR considers it appropriate to shorten, to 5 sitting days, the disallowance period for all legislative instruments it registers and tables regarding annual and further levies in circumstances where those amounts are limited to relevant sub-sector caps. This could be achieved with the addition of a provision in the legislative framework similar to section 11 of the *ASIC Supervisory Cost Recovery Levy Act 2017*.

For clarity, the CSLR does not consider it necessary to alter the 15-day disallowance period that applies to the Ministerial determination relevant to the imposition of a special levy.

## 3.2 Impact of levy cap

In accordance with the legislative framework, the total levy (annual and further combined) imposed on a sub-sector for a levy period cannot exceed $20m[30]. The impacts of large firm failures (in particular, DASS and UGC) will mean that in two of the first three years of CSLR's operation, the total levy estimate in respect of the financial advice sub-sector will significantly exceed the $20m sub-sector cap.

The impacts of exceeding the sub-sector cap may include the need to,

- prioritise claim payments based on available levy funds
- manage claimant expectations
- partial handling of claims
- pausing claims assessments resulting in a backlog of activities once funding is received
- slow down AFCA activities, as the CSLR will not have funds to pay complaint fees and user charges;
- monitor claim volumes, assumptions, financial firm failures, and claim processing volumes;
- engage additional actuarial work in relation to determining revised estimates; and
- engage in legal and administrative processes associated with raising special levies.

Given the time it takes to receive funds above the sub-sector cap via a special levy, it is anticipated that some claimants will face delays of over 18 months prior to receiving compensation.

The CSLR acknowledges the importance of transparency and accountability assured through parliamentary scrutiny of legislative instruments related to levies. It is crucial for the CSLR to have sufficient funds to manage fluctuations caused by large firm failures or unexpected increases in claim volumes.

[30] *Financial Services Compensation Scheme of Last Resort Levy Act 2023 (Cth)*, section 17(2)

Figure 9[31], shows the financial impact and expectations of failures deemed to be either "significant" or "major".

*Figure 9: Large firm failure definitions – personal financial advice.*[32]

| Definition | # unpaid in-scope complaints | | Total amount @ lower bound $ | Total amount @ Upper bound $ | Expected # per year* | Return period (years) |
|---|---|---|---|---|---|---|
| | Lower bound | Upper bound | | | | |
| 'Significant' | 25 | 99 | 3,687,500 | 14,750,000 | 0.50 | 2.0 |
| 'Major' | 100 | 399 | 14,750,000 | 59,000,000 | 0.25 | 4.0 |

Assuming normal conditions, it is likely that the CSLR will be reliant upon special levy funds every two years in circumstances where the sub-sector levy cap is unable to absorb a "significant" firm failure.

Balancing the concerns of the industry regarding levy payments with the ultimate impact on consumers is essential. Ensuring that the CSLR has the necessary financial resources to respond promptly to significant events will not only protect consumers but also contribute to the overall stability and resilience of the financial sector.

> **CSLR Observation:** Due to large firm failures (DASS and UGC), in two of the first three years of CSLR's operation, the total levy estimate in respect of the financial advice sub-sector will significantly exceed the $20m sub-sector cap.
>
> Based on actuarial estimates, a "significant" event should be expected every two years, and a "major" event should be expected every four years, indicating that the sub-sector levy cap, based on the current eligible claim criteria, is expected to be exceeded frequently.

## 3.3 Inefficient special levy process

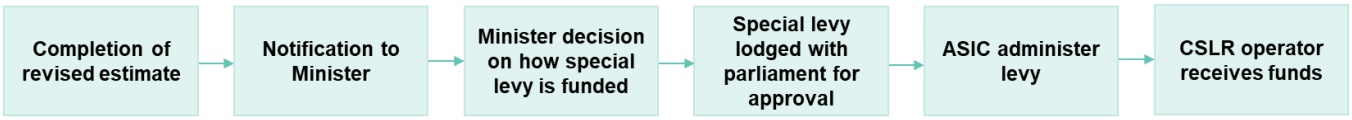
In the event the CSLR's initial cost estimate for a sub-sector exceeds the $20m cap, as is the case for the initial cost estimate for the personal financial advice sub-sector for levy period three (FY26), ASIC can only issue the annual levy based on the $20m sub-sector cap.

For the CSLR to levy an amount over the $20m sub-sector cap, the CSLR is required to notify the Minister that a sub-sector cap has exceeded the $20m cap.[33] The Minister has discretion to determine a special levy, including who the levy applies to, the amount of the levy, the timing of the levy and how the levy is calculated for each identified entity. This decision is subject to a parliamentary disallowance process.

The notification from the CSLR to the Minister is contingent on a revised estimate of claims, fees and costs for the relevant levy period having been completed.[34]

[31] Information extracted from Figure 1, pg 9.
[32] Finity Consulting, *Memo to the CSLR re: personal financial advice*, February 2025.
[33] *Corporations Act 2001 (Cth)*, Section 1069F and 1069H
[34] *Corporations Act 2001 (Cth),* section 1069F and 1069H and *Financial Services Compensation Scheme of Last Resort Levy Act 2023 (Cth),* section 10.

*Figure 10: CSLR revised estimate and subsequent special levy*




***Assumptions***

- *Minister takes 6 months to determine how the special levy is funded.*
- *There is no motion to disallow the special levy.*
- *12 to 18 months from request to 1st funds being received by CSLR.*

Key complications in relation to the completion of a special levy include,

- The need for a special levy will likely be known prior to the start of the levy period but can only be notified to the Minister after the levy period has commenced.
- Despite CSLR having completed an initial cost estimate and being in a position to notify the Minister that a sub-sector levy requirement will exceed the sub-sector cap, it is required to undertake the additional exercise of completing a revised estimate, an exercise that is material in nature.
- The Minister does not have a specified time within which to make a decision in relation to the special levy.
- The Minister has the discretion to impose a special levy, including who the levy applies to, the amount of the levy, the timing of the levy and how the levy is calculated. This decision is subject to a 15-day parliamentary disallowance process.
- There would be a need to ensure that ASIC activity to administer all CSLR levies do not overlap.
- There can be challenges in meeting the sitting days disallowance period requirement, in particular as there tend to be no sitting days in December, January or July.
- Any motion to disallow the instrument would further delay the available funding.

**Recommendation:**

The Ministerial notification process should be triggered at any time from the initial estimate, supported by a revised estimate. We do not anticipate that this amendment (and any consequential amendments) would result in the CSLR not having to impose an annual levy, as the initial estimate would still enter into force.

The change would simply allow the CSLR to initiate the process for the Minister to impose a special levy where necessary and appropriate. The resulting impact is that the Minister would have additional time to consider the approach that may be taken to imposing a special levy.

Subject to the above, the CSLR considers it appropriate for the Minister to have a defined period to determine how a special levy will be funded or alternative instructions provided to the CSLR in line with the current legislation, For example, it could be appropriate to have a period of three months for the Minister to obtain advice, engage in consultation activities and formulate an approach to how a special levy ought to be imposed.

## 3.4 Impact of reserve and time taken to replenish

In accordance with the legislative framework, the capital reserve is set at $5m[35] for all four sub-sectors. The purpose of the reserve is to provide a financial contingency for the CSLR so that it may apply it to various obligations, including paying compensation and covering administrative costs consistent with section 1069Q of the Corporations Act.

Based on our operational experience, the volume of claims received and estimated in our FY26 levy estimate (being higher than originally anticipated), and the timing challenges outlined elsewhere in this submission and the matters outlined in Figure 1 above, the CSLR considers the reserve to be inadequate to respond to the following Personal Financial Advice scenarios only:

- more than three higher range BAU[36] financial firm failures – noting a BAU financial firm failure is expected to occur four times per year; or,
- one higher range Material[37] financial firm failure - noting a Material financial firm failure is expected to occur once per year; or,
- one low-range Significant[38] financial firm failure - noting a Significant financial firm failure is expected to occur once every two years

An additional complexity is the need for the CSLR to continue meeting its administrative costs while responding to the impact of increased claim volumes that would arise in the above scenarios or if annual levy funds are not receipted at the start of the levy period. Given the timing challenges and uncertainties associated with the receipt of levy funds (including the time required to replenish the reserve) and the size of the reserve, the CSLR anticipates limited circumstances where it could concurrently address these scenarios and cover its operational costs.

The inability of the CSLR to respond to such an event without needing to wait for special levy funds could result in claimants receiving compensation payments some 12 to 18 months after lodging a claim with the CSLR, as highlighted in Figure 7 on p26.

**Recommendation:**

Use an actuarial assessment to determine the appropriate size of capital that would be required to support multiple “significant” events (25 to 99 complaints) and “major” events (100 to 399 complaints) that are likely to occur once every four years.

CSLR having access to an appropriate level of reserve could smooth out the fluctuations that would likely occur between levy years, providing greater certainty of future levies on the industry and timely payments to claimants. These capital reserves could be funded via the following options.

**Option 1** – Increase the CSLR reserve amount

Allow the CSLR to hold an increased capital reserve in line with the actuarial estimate.

**Option 2** – Allow the CSLR to borrow the funds

Based on the actuarial estimate, the CSLR could have access to a line of credit from the government to ensure continuity of compensation payments to victims, with the line of credit replenished from levies.

[35] *Financial Services Compensation Scheme of Last Resort Levy (Collection) Act 2023 (Cth)*, Section 7
[36] Finity Consulting, *Memo to the CSLR re: personal financial advice*, February 2025.
[37] Finity Consulting, *Memo to the CSLR re: personal financial advice*, February 2025.
[38] Finity Consulting, *Memo to the CSLR re: personal financial advice*, February 2025.

**Option 3** – Government funded reserve

The CSLR could be provided access to a government funded reserve for an appropriate amount, based on actuarial assessment. A potential source for the government-funded reserve could be penalties recovered by ASIC in connection with enforcement activities it undertakes against licensees within the defined sub-sectors of the Scheme.

## 3.5 Reconciliation for the pre-CSLR levy estimate

The legislative framework provides for reconciliation processes to adjust estimates by adding or removing amounts where there has been a shortfall or excess collected in an earlier period.

Specifically, the pre-CSLR levy estimate process requires the CSLR to determine any excess or shortfall through a revised estimate process prior to the start of the fourth levy period.

This requirement presents a significant challenge given a portion of pre-CSLR complaints are likely to remain unprocessed by the start of FY27, being the fourth levy period.

Consequently, while the CSLR will have greater certainty regarding the pre-CSLR compensation claims than it currently does, it would be appropriate to conduct the reconciliation process after all the pre-CSLR claims have been received by the CSLR. Based on the October 2024 AFCA forecast, appropriate step notices for pre-CSLR complaints were expected to have been issued by June 2026 with claims paid by the CSLR in October 2026.

**Recommendation:**

The CSLR suggests that an amendment should be made, permitting the Scheme to conduct the reconciliation exercise at any time rather than before the beginning of the next FY levy period.

## 3.6 Levy for deregistered or ceased members

Payers of an industry sub-sector annual levy are levied a NIL amount if they are deregistered or cease to be a member of a sub-sector prior to the end of the metric collection period, which will typically be the end of September each year.[39]

The same mechanism does not apply to further and special levies, with the result that some entities that have ceased to be a member of a sub-sector may be levied in relation to that sub-sector.

**Recommendation:**

In fairness to the financial services industry, the regulations should be amended to apply a NIL amount to further and special levies, just as this is applied in relation to the annual levy for deregistered members or those who are no longer members.

[39] *Financial Services Compensation Scheme of Last Resort Levy Regulations 2023 (Cth),* Section 10

# 4 Enhancing trust in the financial sector

The CSLR observes that the majority of financial firms within the four sub-sectors under the Scheme's remit are compliant with regulatory expectations. However, those who do not comply can have a disproportionately negative impact on an entire sub-sector.

The CSLR is committed to supporting the sector in enhancing consumer-focused protections, thereby fostering greater trust in the financial services industry.

**Based on its experience over the last ten months, the CSLR believes the following issues require further consideration.**

4.1 Industry practices resulting in a claim

4.2 Frequency of firm failures

**We note that the above issues would more appropriately be assessed and supplemented with additional context from policy and regulatory bodies.**

## 4.1 Industry practices resulting in a claim

A comprehensive approach to mitigating harm includes the recognition that people use trained and qualified financial professionals to deliver services. Consumers also look for a trusted source to provide relevant warnings, advice and assistance in navigating complex products and scenarios.

Whilst the CSLR has exposure only to the extreme subset of adverse behaviour within the financial sector, it has observed some consistent themes in relation to elements contributing to a claim. These items are listed as observations only:

1. Inappropriate use of Self-Managed Superannuation Funds
2. Conflicted advice, particularly with related or in-house financial products
3. Lack of accountability for subsidiaries and/or acquisitions

## 4.2 Frequency of firm failures

Based on the actuarial information provided by the CSLR's principal actuary *(see section 1 of this document)*, the size and frequency of firm failures in the personal financial advice sector presents a significant challenge to consumers, and the CSLR and its ongoing sustainability.

# Addressing the scope of the review

## How the CSLR is delivering on its intended objectives

Over the past ten months, the Scheme has been established and has operated in accordance with the legislative framework to provide some compensation for victims of financial services misconduct, as a last resort, when AFCA determinations remain unpaid. A summary of our claims data and insights can be seen in Appendix 2. CSLR recognises the important role it plays in building trust and confidence across the sector, not only to ensure the longevity of a robust financial industry, but for the benefit of all Australians who are looking for experts to advise on and assist with some of the most personal and important facets of their lives.

As the sector works closely with regulators to reduce future firm failures, the CSLR will continue to improve its processes and efficiencies to ensure the long-term sustainability of the scheme so that it remains available to consumers when they need it most.

## How the CSLR funding model is formulated, including its potential impacts on businesses that fund the industry levy

CSLR's observations in relation to its funding model are set out in *Section 1 (a sustainable CSLR)* and *section 3 (challenges and shortfalls of the current CSLR funding model).*

CSLR is unable to comment on the impact of levies on businesses and industry, as it lacks the necessary data or information to form a fact-based view or conclusion. These matters are best addressed by industry and businesses, who are better positioned to provide informed perspectives and data evidencing their capacity to fund levies.

## How the powers of the CSLR Operator interact with the delivery of the Scheme

The powers of the CSLR are adequate for the delivery and administration of the scheme. This is evidenced by the fact that the scheme is operational and achieving its intended purpose and objectives, as demonstrated by the claims data evidenced in Appendix 2.

The CSLR has navigated numerous complexities during the initial ten months of its operation. Implementing a scheme within such a complex legislative framework has presented challenges. However, the CSLR has worked closely with the financial services sector, consumer advocates, and regulatory bodies to address and resolve issues. Each challenge has been an opportunity to learn and improve efficiencies, benefiting the Scheme, consumers, the sector, and ensuring long-term sustainability. As with any new legislative framework, opportunities for refinement exist.

To enhance efficiency and sustainability, certain elements within the legislative framework may require adjustment. The CSLR has identified these areas and has proposed solutions based on experience over the past ten months, outlining these solutions in sections 1 to 4 of this document.

Ultimately, legislative changes are the Government's prerogative. The CSLR is committed to sharing data, information, and experiences to support any legislative amendment process. The CSLR firmly believes that a collaborative approach involving industry representatives, consumer groups, ASIC,

AFCA, and experienced actuaries is essential for developing future legislative enhancements. This collaboration will ensure optimal outcomes for all parties involved.

## The current scope of the CSLR and any related matters

The CSLR has been designed and built with the flexibility to accommodate both the narrowing and expansion of its scope, making it sub-sector neutral.

The CSLR is aware of the differing opinions on whether the Scheme should be funded by other sub-sectors and whether the scope of the Scheme should be broadened. The CSLR is not able to comment on the appropriateness or impact of any such change as it does not possess the information or data to present fact-based views.

The Scheme recognises the interconnectedness of the financial services sector and the possibility for more than one sub-sector to be involved in a particular case of misconduct. However, the CSLR does not have visibility on losses incurred by service-providing sub-sectors and those incurred by product-responsible sub-sectors when assessing compensation claims.

The CSLR considers these issues are best addressed by industry stakeholders, AFCA, ASIC and experienced actuaries.

# Appendix 1: CSLR claimant trends

The CSLR deals with people from all walks of life, each with a unique set of circumstances. Based on the first 10 months of claim data, the average CSLR claimant:

- Received personal financial advice
- Is 63.5 years old.
- Lives in NSW/ACT (NSW=149) or Victoria (VIC=96).
- Received personal financial advice in relation to superannuation, regularly relating to the establishment and/or management of a self-managed super fund.
- Received an average AFCA determination amount of $224,657.
- Received, or will receive a CSLR compensation payment of $91,109.

Unfortunately, the scheme's purpose sees us interacting with people when they are experiencing high-stress levels about their financial futures and are of an age where they are unable to financially recover from the loss, further cementing the importance of the CSLR.

It is, however, important to acknowledge that the CSLR often witnesses the end of what can be a very lengthy, stressful and uncertain time for many of our claimants.

The relief claimants feel upon receiving all or part of their determination is something that cannot be understated, as demonstrated by some of the claimant stories that the CSLR has been given permission to share in section 2 of this document.

# Appendix 2: CSLR claims data

**Claims received**

| Sub-sector | Pre CSLR claims*[40] | Post CSLR claims |
|---|---|---|
| Personal financial advice | 241 | 49 |
| Credit provision | 8 | 5 |
| Credit intermediation | 8 | - |
| Securities dealing | 29 | 12 |
| Out of Scope | 1 | 0 |
| **TOTAL** | **285** | **66** |

**Claims paid**

As of January 31, 2025, the CSLR has made payment on 151 claims, to a value of $13.75m.

These 151 payments have been made as per the legislation, across the four sub-sectors as follows:

| Sub-sector | Pre CSLR | FY25 | # of claims paid |
|---|---|---|---|
| Personal financial advice | 107 | 10 | 117 |
| Credit provision | 3 | 5 | 8 |
| Credit intermediation | 5 | - | 5 |
| Securities dealing | 16 | 5 | 21 |
| **TOTAL** | **131** | **20** | **151** |

These payments have been made relating to determinations against 36 separate financial firms and, as a result, seven of these firms have had their Australian Financial Service Licence (or equivalent) permanently removed. As outlined in the legislation, any firm with a payment made to a CSLR claimant faces mandatory loss of licence in Australia.

The majority of claims paid under the CSLR in the FY24 and FY25 periods have related to personal financial advice, often in relation to a self-managed superannuation fund (SMSF).

> *'Observations indicate that when providing advice in relation to the establishment and use of self-managed superannuation funds, it was common for the financial advisor to fail to properly assess claimants' existing circumstances before recommending high-risk strategies, often involving significant gearing and concentration risks. Advisers frequently did not consider alternative investments that might have met claimants' objectives better.'*
> **CSLR Impact Report – 2024**

[40] Claims with an AFCA complaint date on or after 07/09/2022

**Personal Financial Advice**

| Personal Financial Advice ( >10 claims) | Pre CSLR claims | Post CSLR claims |
|---|---|---|
| Dixon Advisory & Superannuation Services | 105 | 29 |
| MyPlanner Australia Pty Ltd | 31 | - |
| Anne St Partners | 13 | - |
| Dover Financial Advisors | 12 | - |
| Nextgen Financial Group Pty Ltd | 5 | 6 |
| Aussie Wealth Super | 11 | - |

*Common themes in personal financial advice include:*

- Inappropriate advice in relation to the establishment and use of self-managed super funds (SMSFs)
- Failure to act in the best interests of the claimant
- Conflicted products or services inappropriately recommended
- Failure to properly assess the claimant's existing circumstances
- Failure to consider an alternative investment that may have better met objectives
- Misclassification of risk profile

**Securities dealing**

| Securities Dealing | Pre CSLR claims | Post Sep 2022 CSLR claims |
|---|---|---|
| APC Securities | 16 | 6 |

*Common themes in securities dealing include:*

- Misclassification of retail investors as wholesale or sophisticated investors
- Misleading the claimant or concealing risk
- Misrepresenting features of the securities
- Misrepresenting the imminent listing of securities
- Guaranteeing returns

**Credit provision**

*Common themes in credit provision include:*

- Issuing loans without assessing the claimant's circumstances appropriately
- Overcharging of fees

**Credit intermediation**

*Common themes in credit intermediation include:*

- Failure to assess suitability for loans
- Conflict of interest