

Compensation Scheme of Last Resort (CSLR): Reform options to support ongoing sustainability

Submission by the Compensation Scheme of Last Resort

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Background and context

This submission has been prepared by the Compensation Scheme of Last Resort (the **CSLR** or the **Scheme**) in response to Treasury's options paper titled *Reform options to support ongoing sustainability* dated April 2026 (the **Options Paper**).

The CSLR was established with bipartisan parliamentary support as a result of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry¹ and the Ramsay Review.² The primary purpose of the Scheme is to support confidence in the Australian financial services system's external dispute resolution framework. Its objective is to provide compensation to eligible consumers in circumstances where an AFCA determination to award compensation has been made, but which the relevant entity has not paid. It provides a last resort means of compensation to persons who have been victims of financial misconduct.

As of 30 April 2026, the CSLR has received 1,729 claim applications and paid approximately \$149.4 million in compensation.

Current claim volumes continue to significantly exceed early expectations and are placing material strain on the Scheme's funding settings. Since commencement, large-scale failures, including Dixon Advisory and United Global Capital, have driven costs beyond what was initially anticipated, requiring extraordinary funding measures.³ Looking ahead, the CSLR has projected 2027–28 costs of more than \$137 million, with over \$126 million attributable to the financial advice sub-sector, excluding potential liabilities from the Shield and First Guardian collapses.

The CSLR's response to the Options Paper reflects its commitment to balancing the following core objectives and challenges: (1) providing support for victims of financial misconduct; (2) ensuring the sustainability of the Scheme through measures that reduce costs without compromising its fundamental purpose; (3) overcoming challenges and shortcomings of the current CSLR funding structure; and (4) addressing industry practices to enhance trust in the financial sector.

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 informed the positions set out in this submission.

This submission addresses each of the proposals in the Options Paper. The CSLR also refers to and repeats the "Background and context" section of the CSLR's **March 2025 Submissions**.⁴

¹ Explanatory Memorandum refers to estimates of \$2.7 million in 2022-23 to \$1.6 million in 2025-26.

² Australian Government, Department of Treasury, 2017, *Review into Dispute Resolution and Complaints Framework, Supplementary Final Report*.

³ Australian Government, Department of Treasury, April 2026, *Compensation Scheme of Last Resort (CSLR): Reform options to support ongoing sustainability*.

⁴ Compensation Scheme of Last Resort, March 2025, *Post-Implementation Review: Compensation Scheme of Last Resort Submission by the Compensation Scheme of Last Resort*.

1 Proposal 1: Enabling CSLR to deduct payments from compensation

1.1 Introduction

The CSLR supports reforms allowing it to reduce compensation payments by considering all relevant amounts that a claimant may receive in connection with the matters covered by an AFCA determination. The CSLR's perspectives are set out below.

1.2 Question 1: Do you support allowing the CSLR operator to reduce compensation payments by considering all relevant amounts that a claimant may receive in connection with the matters covered by an AFCA determination?

Currently, section 1067(b)(i) of the Corporations Act only permits a deduction for amounts paid to the person in accordance with the relevant AFCA determination, including any partial payments or any payments made to the person as an unsecured creditor of a Chapter 5 body corporate *“for the matters covered by the determination”*.

In addition, whilst the legislation allows compensation payable by the CSLR to a claimant to be reduced by amounts previously paid under the original AFCA determination,⁵ or by another statutory compensation scheme,⁶ regulations have not been made to specify further deductible categories of payment that a claimant may receive such as payments received through class action settlements, dividends from liquidations, a deed of company arrangement (**DOCA**), professional indemnity (**PI**) insurance payments, actions commenced by the claimant themselves for recovery of losses, and other payments received by claimants that are not currently subject to deductions (**Other Proceeds**).

Consequently, in some circumstances, the CSLR may be required to pay compensation to a claimant which effectively amounts to ‘double recovery’ where there is no mechanism by which the CSLR can deduct amounts for those Other Proceeds.

In light of the above, the CSLR supports the making of regulations to reduce compensation payments by considering all relevant amounts that are connected to the same loss, the subject of an AFCA determination. The CSLR also agrees with Treasury that such reform could be enacted through regulations envisioned by section 1067(b)(iii) of the *Corporations Act 2001* (Cth) (**Corporations Act**) and could be deducted from the loss calculated pursuant to an AFCA determination.

This is consistent with the CSLR's March 2025 Submissions, in which it recommended that regulations be made to allow the CSLR to reduce compensation payments to take account of any amount paid to a person in connection with the matters covered by the AFCA determination in any capacity.

⁵ See section 1067(b)(i) of the Corporations Act. It is acknowledged that AFCA's determination does, where appropriate, include deductions for amounts received by claimants in connection with matters relevant to the overall conduct addressed in a determination.

⁶ See section 1067(b)(ii) of the Corporations Act.

In terms of implementation, the CSLR raises the following matters for consideration by Treasury, noting the need for any reform to strike the right balance between flexibility and precision:

- the threshold question of whether Other Proceeds are sufficiently connected to the loss that is the subject of an AFCA determination should leave little room for ambiguity. Any regulations should define how, when and by whom the exercise to account for the Other Proceeds is undertaken, including circumstances where Other Proceeds may be received by claimants after compensation has already been paid by the CSLR. The CSLR is content to undertake the exercise of deducting the Other Proceeds, however, it submits the need for there to be a clear approach that can be applied.
- as deductible amounts can emerge through a range of mechanisms (including class action settlements, dividends from liquidations, DOCA or PI insurance payments, each with its own timeline, quantum and degree of certainty), there also needs to be some flexibility to facilitate the approach most suited to the circumstances of each case, including the timing and methodology for applying any deductions.
- the administrative burden on CSLR should also be taken into account so that CSLR's role as a scheme of last resort is protected, as the CSLR is not a recovery agency.

1.3 Question 2: What factors should the Government consider in terms of timing?

In terms of timing, any reform must balance accuracy versus efficiency, having regard to the fact that claimants seeking compensation from the CSLR have already likely faced considerable delays in seeking redress for financial losses.

In practice, the CSLR's claims process operates as follows. First, the claimant lodges a claim with the CSLR which must relate to a single unpaid AFCA determination. Secondly, the CSLR assesses the claim against the eligibility criteria in section 1064 and if the claimant is eligible and CSLR has funding to pay the claim, it makes an offer of the amount referred to in section 1067 subject to engagement with the financial firm and/or administrators/liquidators to confirm AFCA claim details, claimant being a client of the firm, whether they have received any compensation to date and whether they will be paid in the future. Upon acceptance by the claimant, the CSLR pays a lump sum to the claimant's nominated bank account in accordance with the relevant AFCA determination.

A practical challenge with Proposal 1 is that Other Proceeds, such as class action settlement payments, DOCA or liquidation dividends and insurance proceeds are often contingent and/or quantified well after the CSLR would otherwise be ready to make (and pay) an offer.

Any regulations made under section 1067(b)(iii) would therefore need to take into account:

- (a) paying consumers promptly; and
- (b) avoiding double recovery or overcompensation in circumstances where later proceeds emerge.

One approach is to ensure CSLR has the tools and information to make any assessment at the time of the offer; or, where that is not possible, to adjust after the event (as further discussed below). The CSLR considers this is consistent with its purpose as a scheme of last resort and sets out some potential options below in terms of implementation.

1.3.1 Question 2.1: How should the reform balance ensuring timely payment of claims to consumers with ensuring accurate information about other payments?

The CSLR has identified potential options with respect to reform. The options are not intended to be exhaustive, but rather those that the CSLR considers most viable based on its experience to date that could be deployed and their likely pros and cons.

When considering these options, CSLR does consider it can make valid offers notwithstanding that the precise quantum of any deductible amounts has not yet crystallised. Further, this is not without precedent within the existing AFCA framework. AFCA determinations can include references to amounts that claimants are anticipated to receive from future events, such as expected returns from the liquidation of financial firms, or anticipated distributions from managed investment schemes (**MIS**), with such amounts to be subtracted from the AFCA determination. By way of example, for complaints made to AFCA involving the Shield Master Fund and First Guardian Master Fund, determinations have been made such that a claimant is entitled to a fixed amount plus interest, less any amount received in the wind-up process.

Potential option 1: The deferral model

One option is to defer all compensation payments until any other known Other Proceeds are sufficiently certain. Once the Other Proceeds are sufficiently certain, the CSLR can make one 'net' payment to the claimant, removing the need to speculate any future proceeds or to 'top up' the compensation at a future date. Set out below are the pros and cons of this option.

Pros of the deferral method

- (a) **Eliminates double recovery risk:** This option eliminates double recovery as the CSLR would only pay once all relevant external amounts have crystallised, with no risk of overcompensation or any need for a subsequent clawback, payment direction or reconciliation mechanism.
- (b) **Administrative simplicity:** A single net payment requires no ongoing monitoring of external processes after compensation has been paid. There is no need for the CSLR to administer payment directions, track third-party distributions, engage in reconciliation exercises, or pursue clawback recoveries. This materially reduces the administrative burden on the CSLR.
- (c) **Accuracy:** Because the payment is only made once all relevant information is known to the CSLR, the compensation amount is the most accurate of the options and reflects the true last resort position. There is no need for estimates, assumptions, or materiality thresholds.

Cons of the deferral method

- (a) **Delay and hardship for claimants:** This is the most significant disadvantage of the deferral method. Based on the CSLR's experience, the majority of claimants are in need of timely compensation given that the losses addressed by the Scheme to date have overwhelmingly related to superannuation savings. Deferring payment until external events crystallise can cause material hardship to claimants who may have already waited a significant period of time to address financial losses.

- (b) **Dependency on third-party timetables:** The deferral method becomes dependent on the timetables of third parties, including liquidators, deed administrators, class action administrators, insurers, and responsible entities of MISs, over which the CSLR has no control and limited visibility. By way of example, liquidations and class actions can take years to conclude; and the winding up of MISs (such as Shield and First Guardian) can be complex and protracted.
- (c) **Inconsistency with the Scheme's purpose:** The CSLR was established to provide timely relief to victims of financial misconduct. A model that defers all payments until external events conclude is difficult to reconcile with this purpose, particularly where the external events may take several years to resolve.

Potential option 2: Upfront payment with 'top up'

The second option is for the CSLR to pay the claimant an amount of compensation upfront, calculated by reference to the section 1067 amount but reduced by a 'reasonable estimate' of Other Proceeds that may be made to the claimant at a future point. If the estimated Other Proceeds amount is ultimately not received, or is received in an amount less than estimated, the claimant would retain the ability to receive a further 'top up' payment from the CSLR to make up the shortfall, up to the lesser of the AFCA determination amount or the statutory cap. Set out below are the pros and cons of this option.

Pros of the upfront payment with 'top up' method

- (a) **Timely payment to claimants:** Unlike the deferral model, this option allows the CSLR to make a payment to the claimant quickly without waiting for all external events to crystallise.
- (b) **Reduces (but does not eliminate) double recovery risk:** By deducting an estimate of future payments at the offer stage, the CSLR reduces the risk that the claimant will receive total compensation exceeding the AFCA determination amount. While the accuracy of any estimate of what a claimant may be entitled to receive by way of Other Proceeds, will depend on factors such as how far progressed the external process is and the information available at the time of assessment, it provides a reasonable approximation of the true last resort position at the time the payment is made.
- (c) **Preserves claimant entitlements:** The 'top up' mechanism ensures, as much as possible, that the claimant is not permanently disadvantaged by an over-estimate. If the estimate proves too high, the claimant can seek a further payment from the CSLR to bridge the gap. This preserves the claimant's substantive entitlement to compensation up to the statutory cap.

Cons of the upfront payment with 'top up' method

- (a) **Estimation risk and uncertainty:** The model depends on the CSLR's ability to make a 'reasonable estimate' of future payments at the time the offer is made. In practice, the quantum of future payments can be uncertain. For example, where a liquidation is at an early stage, where a class action is only at a preliminary stage through the Courts, or where a MIS is being wound up over an extended period. That is why it is important that the valuation methodology for an estimate be set out in legislation with sufficient certainty for the CSLR to apply.
- (b) **Administrative complexity of reconciliation:** The 'top up' mechanism introduces ongoing administrative obligations for the CSLR, including monitoring the outcome of external events,

assessing whether the estimate was incorrect, and processing further payments where warranted.

- (c) **Potential for disputes:** The use of estimates may lead to disputes with claimants - both at the offer stage (for instance where a claimant disagrees with the quantum of the estimated deduction) and at the reconciliation stage (for instance where a claimant seeks a top-up payment and the CSLR disagrees that the estimate was materially incorrect). Reforms would therefore need to include a mechanism for resolving any such disputes quickly and efficiently.
- (d) **Time limits and evidentiary requirements for top-ups:** Any top-up right should be subject to reasonable time limits, so that the CSLR is not required to hold claims open indefinitely. However, setting time limits that are too short risks extinguishing legitimate claimant entitlements.

Potential option 3: Upfront payment with payment direction

Under this option, payments would be made to the claimant upfront, with the law requiring that, as a condition of receiving compensation, the claimant gives the CSLR an irrevocable direction (in the form of a deed poll) that any later distributions they become entitled to receive from external sources (i.e. the Other Proceeds), are paid directly to the CSLR. This approach is currently deployed by the CSLR for claimants seeking compensation resulting from the liquidation of advice licensee United Global Capital Pty Ltd (**UGC**) where relevant AFCA determinations permit the compensation amount to be offset by the value of any distributions or returns received by claimants through the liquidation of Global Capital Property Fund Pty Ltd. While it remains to be seen how the payment direction process will operate in practice once funds are made available through the liquidation, the process is, on its face, straightforward. In that regard, the payment direction is a deed poll which is in the form of a letter from the claimant to the liquidators of the relevant party.

By contrast, the approach would not appear as straightforward for claimants who, for example, were investors in Shield or First Guardian through platform or custodian services. Given members' funds are subject to various legislative and regulatory requirements, there are inherent constraints on the ability of claimants to issue payment directions that can be implemented by the relevant platform or custodian. Those entities must act within the confines of their governing legal and compliance frameworks, which may preclude acting on such directions. Accordingly, in these circumstances, it may be necessary to obtain targeted legislative or regulatory relief to facilitate proposed payment arrangements.

Pros of the upfront payment with payment direction method

- (a) **Timely payment to claimants:** As with the upfront payment with top-up model, this option allows the CSLR to pay compensation up to the cap if appropriate promptly without waiting for external events to crystallise.
- (b) **Captures later proceeds directly:** Unlike the top-up model (which relies on the claimant seeking a further payment), this model captures later proceeds at source – i.e., the external payor remits directly to the CSLR.
- (c) **Consistent with the last resort principle:** The model ensures that the CSLR only bears the net cost of compensation after all other reasonably available sources have been exhausted - which is the defining feature of a last resort scheme.

Cons of the upfront payment with the payment direction method

- (a) **Reliance on third-party consent:** The payment direction model would require the cooperation of third parties, including for instance, liquidators, deed administrators, and responsible entities of MIS, and class action administrators to accept and give effect to the payment direction. In the absence of a statutory obligation to comply, third parties may decline to honour the direction, or inadvertently make payments directly to claimants, thereby rendering the mechanism ineffective.
- (b) **Administrative complexity of ongoing monitoring:** The CSLR would need to monitor the progress of external processes (liquidations, MIS wind-ups, class actions) for each claim where a payment direction is in place, track distributions as they are received, process pass-through payments to claimants, and maintain records for reconciliation purposes. This would create an additional ongoing administrative burden that would scale with the number of active payment directions in place.
- (c) **Does not address all scenarios:** The payment direction model works best where future payments are channelled through a controllable intermediary (such as a liquidator or responsible entity) who can be directed to remit payments to the CSLR directly. It is less effective where payments are made directly to the claimant - for example, in class action settlements or some insurance payments, because the CSLR cannot easily interpose itself in the payment chain.

Potential option 4: Hybrid approach

Under this option:

- if the external amount is known / can be quantified (i.e., the insurer has admitted cover and an amount has been fixed, or a liquidation dividend has been declared), CSLR can deduct the Other Proceeds at the offer stage;
- if the future amount is likely but is channeled through a controllable intermediary (for example, liquidator or responsible entity), the payment direction method is used – that is, the CSLR pays an upfront payment and captures later proceeds at source through the deed poll mechanism; and
- if the future amount is uncertain and paid directly to the claimant (often in class action proceedings or some insurance settlements where the CSLR cannot interpose itself in the payment chain), CSLR uses a targeted clawback power to recover later payments within a defined window.

Pros of the hybrid approach

- (a) **Maximum flexibility:** The hybrid model allows the CSLR to select the tool most appropriate to the circumstances of each claim, rather than being locked into a single mechanism that may not suit all factual scenarios.
- (b) **Balances the competing objectives:** The hybrid model achieves the balance between timely payment (i.e. efficiency) and avoiding double recovery (i.e. accuracy) that the CSLR considers essential.

- (c) **Consistent with the last resort principle:** The model ensures that the Scheme only bears the true last resort cost, being the net amount remaining after all other sources have been taken into account, regardless of when those other sources materialise.
- (d) **Claimant choice:** There is also a possibility of entitling the claimant to elect which option they wish to go with and ensuring they clearly understand what each option means for them.

Cons of the hybrid approach

- (a) **Complexity:** The hybrid model requires the CSLR to maintain the operational capability to apply three different mechanisms and to determine, on a case-by-case basis, which mechanism is the most appropriate. This requires clear decision criteria (which should be set out in the regulations), staff training, and robust systems and processes.
- (b) **Administrative burden:** While the hybrid model provides flexibility, it also imposes the cumulative administrative burden of all three mechanisms — including estimation and verification (for deductions), ongoing monitoring and reconciliation (for payment directions), and claimant recovery actions (for clawbacks).

The CSLR's preferred approach is outlined in Option 3, noting the constraints outlined above. It notes, however, that additional regulatory or legislative refinement may be required to ensure the approach can be applied consistently across all claim scenarios.

1.3.2 Question 2.2: Should the CSLR have a clawback mechanism for cases where deductible amounts were not known at the time of payment?

The CSLR submits that the implementation of any reform enabling clawbacks must have regard to the administrative burden placed on the CSLR and stress and uncertainty placed on claimants in any action for recovery of compensation. The CSLR also refers back to its response to Question 2.1, which considers the 'clawback mechanism' in detail.

2 Proposal 2: Expanding CSLR subrogation rights

2.1 Introduction

The CSLR supports subrogation rights and Treasury's consideration of options to improve those rights in order to improve the sustainability of the Scheme.

The CSLR's existing subrogation rights are set out in section 1069A of the Corporations Act. This provides that, 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."

This subrogation right, however, is limited, including because the CSLR is only subrogated where the AFCA member is (or has become) a Chapter 5 body corporate, and then only in respect of rights and remedies “*recognised by an officer of the Chapter 5 body corporate*”.⁷

The CSLR agrees that increased subrogation rights, even when not exercised, increase the accountability of all players and can provide the CSLR with additional leverage when dealing with solvent firms. Having said that, the risks of increased subrogation rights must be balanced so that the CSLR is not perceived as a primary recovery body (rather than its function as a payer of last resort).

The Options Paper presents two reform options:

- Option 1 subrogation to the full AFCA determination amount (rather than the compensation amount paid by CSLR).
- Option 2 expanding recovery sources.

The CSLR also makes two overarching observations before setting out its submissions in relation to Options 1 and 2:

- If the existing subrogation rights are extended, the quantum of any recovered amounts is likely to be modest because the financial firms whose AFCA determinations remain unpaid have typically entered external administration with limited remaining assets. The CSLR has submitted proofs of debt where appropriate, but to date has received only one distribution of \$18,129.33. Recoveries, even if received, are expected to relate to claims paid in previous years and given the CSLR commenced in April 2024, it is yet to see any significant recoveries.
- The overall process would benefit from the CSLR having the enhanced ability to work more closely with ASIC when dealing with solvent firms. For example, where ASIC is already engaging with a firm in relation to compliance concerns or potential enforcement action, early information sharing between ASIC and the CSLR has the potential to support a more positive outcome for claimants (who may be adversely impacted) and reduce administrative backlog.

2.2 Question 1: Do you support Option 1 or Option 2 to expand the CSLR operator’s subrogation rights?

2.2.1 Option 1: Subrogation to the full AFCA determination amount

Option 1 proposes expanding the CSLR’s existing subrogation right under section 1069A of the Corporations Act to the *full* AFCA determination amount (not just the amount of the compensation paid by the CSLR, which is capped at \$150,000), with the CSLR retaining all recovered monies to offset scheme costs.

The CSLR’s position is that whilst an expansion of its subrogation right to the full AFCA determination amount increases the CSLR’s ability to recover funds, which in principle is consistent with one of the objectives of the Scheme, the CSLR is concerned that such an option may take away from the claimant’s rights. Under this option, any amounts recovered in excess of the CSLR claim limit would not be paid to the claimant. This risks the CSLR being perceived as a recovery body rather than its primary function as a scheme of last resort.

⁷ Compensation Scheme of Last Resort, March 2025, *Post-Implementation Review: Compensation Scheme of Last Resort Submission by the Compensation Scheme of Last Resort*.

2.2.2 Option 2: Expanding recovery sources

Option 2 proposes expanding the CSLR's subrogation rights to enable the CSLR to pursue recoveries from a broader set of sources, including: (a) PI insurers of Chapter 5 body corporates; (b) entities that are not Chapter 5 body corporates, including individuals and partnerships; and (c) corporate AFCA members that have not become Chapter 5 body corporates. These are discussed below:

- (a) **PI Insurers of Chapter 5 Body Corporates:** The CSLR supports an expansion to empower the CSLR to make claims against a Chapter 5 body corporate's PI insurer. However, the CSLR recognises that this would mean the CSLR is subrogated to the rights of the firm itself as opposed to the rights of the claimant, and there are practical issues that arise in this circumstance, including:
 - (i) whether a PI policy responds will depend on its particular terms, including any exclusions, and the CSLR may inherit a weak position if the insured firm has not notified the PI insurer in time or if the notice was inadequate;
 - (ii) the administrative costs to the CSLR of stepping into the shoes of the firm would need to be managed, noting that the current role of the CSLR is not one of an active litigant. Expectations also need to be managed regarding the CSLR's ability to recover versus administrative costs, particularly if a dispute arises against a PI insurer driving the CSLR into complex multi-party litigation;
 - (iii) if this option were pursued, it would be necessary to strengthen the CSLR's information gathering right under section 1069D of the Corporations Act to ensure that the CSLR can obtain any information and documents it needs to pursue the claim or engage with questions PI insurers might raise. In particular, the CSLR would need access to the PI policy itself, all notification correspondence and any claims history - information that is typically held by the insured firm (which may be in external administration) or by the insurer (who has no current obligation to provide it to the CSLR);
 - (iv) where a firm has multiple claimants and its PI insurance is limited, the CSLR may need to determine which claims to pursue and prioritise. This could give rise to difficult allocation questions - for example, whether the CSLR should pursue recovery on behalf of all claimants pro rata, or prioritise claims with the strongest prospects of success, or prioritise claimants with the largest losses. Any prioritisation framework would need to be transparent, fair and defensible against challenge by claimants who are not prioritised; and
 - (v) the CSLR is cognisant that pursuing PI claims can be costly and that such rights would need to be exercised in appropriate circumstances, only having regard to sustainability issues for the Scheme.
- (b) **Entities that are not Chapter 5 Body Corporates:** The CSLR supports the expansion of its legislative subrogation right to expressly permit recovery against non-Chapter 5 body corporates, individuals and partnerships. This would close the current gap whereby the CSLR has no subrogation right against a non-paying or unresponsive AFCA member that is an individual or partnership, or against a corporate AFCA member that has not become a Chapter 5 body corporate.

If Option 2 were to be adopted, the CSLR's view is that the proposed amendments should also provide that if compensation in respect of a claim is paid by the CSLR, the Scheme is then subrogated to the extent of that payment.⁸

- (a) to all the claimant's rights and remedies concerning the loss to which the claim relates (rather than being 'in relation to the relevant AFCA determination'); and
- (b) even if those rights are not recognised by an officer of a Chapter 5 body corporate (where applicable, noting Option 2 proposes to expand the subrogation right beyond Chapter 5 body corporates anyway).

2.3 Question 2: Are there sufficient benefits to pursuing legislative reforms in the context of limited recoveries?

Whilst the CSLR has only received one distribution to date (see section 2.1 above), it does see benefits in pursuing legislative reforms as broadened subrogation rights as follows:

- (a) increased accountability of all participants in the financial services system;
- (b) providing the CSLR with additional leverage when dealing with solvent firms;
- (c) removing legal and practical obstacles that prevent the CSLR from pursuing recoveries where it is economical to do so, thereby reducing the net cost burden ultimately borne by levy payers; and
- (d) signalling to the market that the CSLR has the tools available to it to pursue recovery where appropriate.

The CSLR notes that the Options Paper refers to the Financial Services Compensation Scheme (**FSCS**) in the United Kingdom, which has recovered more than £310 million from failed firms since 2015–16.⁹ The CSLR, by contrast, has received a single distribution of \$18,129.33. Given that the timing of recoveries is closely tied to the progression of liquidation processes, CSLR expects recoveries to increase gradually over time, though not necessarily to a material extent. Noting this, there are further structural and operational differences between the two schemes:

- The FSCS compensates consumers directly upon a firm being declared in default - it does not require a prior determination by an ombudsman or tribunal. This means the FSCS is involved at an early stage and can take immediate steps to protect and pursue its recovery position. The CSLR, by contrast, can only become involved after the AFCA complaints and compliance process has been exhausted - by which time the firm's assets may have been depleted or distributed.
- The FSCS has three distinct recovery mechanisms available to it – (1) subrogation, (2) the ability to make compensation payments conditional on the claimant assigning their rights, and (3) deemed appointment of the FSCS chairman as attorney and agent of the claimant in certain circumstances. The CSLR, by contrast, has only one: the subrogation right under section 1069A of the Corporations Act, which is limited to Chapter 5 body corporates and rights recognised by an officer of that body. The CSLR has no assignment power and no attorney/agent mechanism.

⁸ See CSLR's March 2025 Submissions, section 1.6.

⁹ Australian Government, Department of Treasury, April 2026, *Compensation Scheme of Last Resort (CSLR): Reform options to support ongoing sustainability*.

- As noted in the Options Paper, the FSCS adopts a broader model for defining subrogation rights, allowing it to unilaterally assume all or part of a claimant's rights and claims - legal, equitable, or otherwise - against the relevant participating firm or their authorised representative (or their successors) and/or any third party in respect of or arising out of the claim in respect of which the payment of or on account of compensation was made. In contrast, the Corporations Act is limited to the rights and remedies of the person in relation to the relevant AFCA determination that are recognised by an officer of the Chapter 5 body corporate.

The CSLR also notes that the primary source for its rights is in the Corporations Act, whereas the majority of rules governing the FSCS are set out in the Financial Conduct Authority Handbook rather than UK legislation (which makes reforms easier in the UK context).

3 Proposal 3: Technical improvements

3.1 Introduction

The Options Paper proposes a package of amendments to correct drafting issues, remove administrative friction and better align CSLR operations with policy intent. The proposed technical improvements include: allowing compensation payments to be split across multiple payees or accounts; preventing payments being made for unauthorised conduct and for products or services that fall outside the scope of the CSLR; reducing the parliamentary disallowance period; defining entity metrics for market participants; aligning special levy imposition with the qualifying period; establishing minimum levy imposition for special levies; and establishing non-participant exemptions for further special levies.

3.2 Question 1: Do you support the additional technical improvement proposals?

The CSLR supports the additional technical proposals and acknowledges that they are likely to deliver targeted, low-risk improvements that enhance claimant experience, facilitate faster compensation payments to victims, and reduce administrative inefficiencies while remaining technically focused and consistent with existing policy intent.

The CSLR makes the following observations in relation to specific proposed technical improvements:

Allow payments to multiple accounts

The CSLR recommends the granting of discretion to the CSLR to determine how to make multiple payments, but, for clarity, does not seek to have a discretion to determine the amount to pay. This is because determination of the compensation amount is a matter for AFCA as the complaints body.

The reason for seeking discretion is that while it will generally be appropriate to seek consent from claimants to make multiple payments for directing payments, there can be circumstances in which it cannot obtain consent or consent is not appropriate. For example, consent may not be able to be obtained where couples are separating, or may be given under duress such as in cases of domestic abuse.

Define entity metric for market participants

The CSLR does not express a view on the technical amendment to define entity metrics for market participants.

Prevent payments for unauthorised conduct and out-of-scope products or services

There may be an unintended consequence from this proposal. The CSLR questions whether it is fair to exclude a consumer who received advice from a licensee which was outside the scope of the licensee's authorisations. In such circumstances, the consumer's assumption that the adviser held the relevant authorisation may have been reasonable. Accordingly, exclusion from CSLR compensation may produce an inequitable outcome notwithstanding that the conduct was technically unauthorised.

For context, the CSLR has paid compensation for the following claims where the conduct in question was outside the scope of the adviser's authorisation:

- 4 claims in relation to the credit intermediation sub-sector; and
- 2 claims in relation to the securities dealing sub-sector.

The securities dealing claims referenced above provide a useful illustration of CSLR's experience in compensating claims arising from unauthorised conduct, and the interaction with AFCA's case management framework.

In that case, AFCA received a larger number of complaints than ultimately progressed to CSLR claims. A number of those complaints were not pursued under Section H of the AFCA Rules. Section H of the AFCA Rules permits AFCA to decline to continue considering a complaint that relates to an eligible sub-sector for the CSLR, where it is satisfied that doing so would serve no practical utility. This typically arises in circumstances where a financial firm is insolvent, defunct, or otherwise non-participating, and there is no reasonable prospect that a complainant would receive compensation even if AFCA were to determine the complaint in their favour.

Importantly, Section H is not applied automatically or in the abstract. AFCA must reasonably believe, having regard to the financial firm's financial position, that the financial firm will not pay the amount in accordance with the relevant determination.

Disallowance period

The CSLR notes that the current period between the CSLR's last action (i.e. registration of the legislative instrument for the CSLR's annual levy estimate, and notification to the Minister of a revised levy estimate) and receipt of levies by the CSLR averages just over 8 months, with such a lengthy period resulting in delays to paying victims. The sooner the disallowance period concludes, the sooner victims can receive compensation.

Below are two figures that illustrate CSLR's operational experience. Figure 1 summarises the CSLR's levy experience, while Figure 2 illustrates CSLR's process for paying personal financial advice claims across the FY26 and FY27 levy periods.

Figure 1 – Disallowance activities and timeframes

Levy type	CSLR last action*	Disallowance complete	Notice issued to levy payers	First funds transferred to the CSLR	Total elapsed period
FY25 initial levy estimate (non-election year)	18 March 2024	4 July 2024	5 August 2024	25 Sep 2024 (after start of levy period being 1 July 2024)	6 months and 7 days
FY26 initial levy estimate (election year)	31 January 2025	31 July 2025	28 August 2025	23 Oct 2025 (after start of levy period being 1 July 2025)	8 months and 23 days
FY26 revised levy estimate (non-election year)	4 July 2025	26 March 2026	22 April 2026	estimated to be 19 June 2026	11 months and 15 days
FY27 initial levy estimate (non-election year)	25 November 2025	23 March 2026	22 April 2026	estimated 19 June 2026 (for start of levy period being 1 July 2026)	6 months and 25 days

* Registration of a legislative instrument for an initial estimate, or notification to the Minister of a revised estimate.

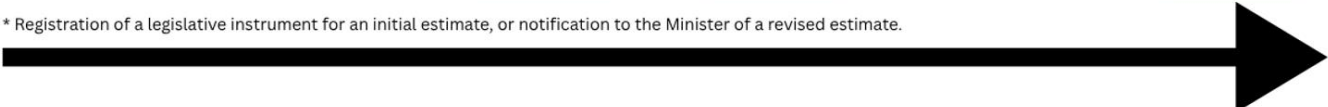
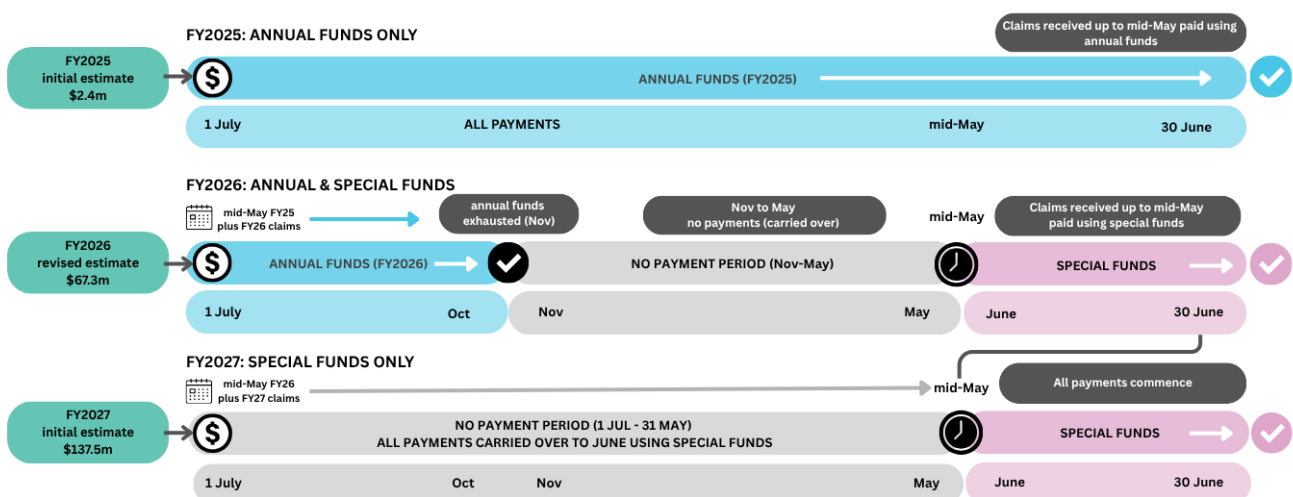


Figure 2 – Process for paying personal financial advice claims

Process for paying personal financial advice claims



Note: Where special levies are materially larger than the annual levy, the practical capacity for the annual levy funds to support compensation becomes increasingly constrained.

Assumptions:

- FY2027 is an indicative future process, assuming the Minister takes less than five months to determine how a special levy will be funded.
- No motion to disallow instruments.

Framed through the lens of claimant experience, these examples highlight the practical consequences of the timing challenges:

- in one instance, a complainant lodged a claim with the CSLR on 9 June 2025; and
- in another instance, a separate complainant lodged a claim with the CSLR on 23 September 2025.

While the CSLR has formally acknowledged receipt of both claims, neither has progressed to payment. Current indications, subject to eligibility assessment, is that payment is unlikely to occur until

approximately the end of June 2026, underscoring the significant delay between claim lodgement and resolution.

The CSLR's experience illustrates the practical impact of these delays. For example, material delays in receiving levies (and, accordingly, delays in paying victims) have occurred as a result of the parliamentary Christmas break and the calling of a federal election. These interruptions to the parliamentary timetable have a direct and material effect on the timing of compensation to victims. Accordingly, and on the assumption that CSLR does not register a legislative instrument where the disallowance period spans two calendar years or coincides with extended parliamentary recess periods, CSLR expects that compensation payments to eligible claimants would typically be made approximately five months earlier than under current timeframes. This expectation assumes that claims are not materially affected by complex deduction issues.

The CSLR also proposes, as an additional technical improvement, that it be permitted to inform the Minister of its forward-looking estimate of required compensation amounts at a time earlier than 1 July each year. This would reduce the funding lead time and allow victims to receive compensation sooner. The CSLR considers that this could be implemented through targeted amendments to section 10 of the *Financial Services Compensation Scheme of Last Resort Levy (Collection) Act 2023 (Cth) (Levy Collection Act)* (and any consequential amendments).

Additional technical improvement – amount of CSLR Reserve

CSLR's current capital reserve is set at \$5 million in total for all four sub-sectors. This figure was set in legislation at the time of establishing the CSLR.

However, as outlined above, the earlier estimate of anticipated claims experience is significantly below the actual claims experience that has occurred. Based on operational experience, the volume of claims received and estimated in the FY26 initial levy estimate, and the timing challenges outlined in the CSLR's March 2025 Submissions, the CSLR considers the reserve amount to be inadequate to respond to even modest financial firm failure scenarios.

The CSLR proposes that the reserve be increased from its current \$5 million, which would be gradually increased over a number of years, recognising the need for a more substantial buffer to support the effective operation of the Scheme. In light of the disallowance period and scheme funding timeframes, the consideration of the reserve's adequacy must also take into account the relative scale of special levies. Where special levies are materially larger than the annual levy, the practical capacity for annual levy funds to support compensation payments becomes increasingly constrained.

In these circumstances, the CSLR's ability to deliver timely compensation is closely linked to the timing and availability of special levy funds. This dynamic highlights the importance of a more robust and responsive reserve, capable of smoothing funding flows and supporting more consistent payment timeframes for claimants. CSLR notes that, in recent experience, some claimants have waited up to 12 months for their compensation after lodging a claim with the CSLR.

Accordingly, there may also be merit in allowing a degree of flexibility in how the reserve is calibrated over time, so that it can respond appropriately to variations in claims experience and funding pressures across different periods.

A comparison with the bank facilities available to the United Kingdom's FSCS¹⁰ (formed in 2001) and the minimum amount held in the National Guarantee Fund by the Securities Exchanges Guarantee Corporation¹¹ (formed in 1987) may assist in providing an insight into the scale of future special levies that the CSLR may need to impose, and the importance of an increased CSLR reserve amount to help smooth funding flows and compensation timeframes for claimants.

3.3 Question 2: Which technical improvements should be prioritised?

The CSLR suggests priority be given to the technical improvements in the following order:

- (a) Disallowance period, noting the amendments we have suggested above for this improvement;
- (b) Prevent payments being made for unauthorised conduct and for products or services that fall outside the scope of the CSLR, noting the amendments we have suggested above for this improvement;
- (c) Additional technical improvement – amount of the CSLR Reserve;
- (d) Minimum levy imposition for special levies;
- (e) Define entity metric for market participants;
- (f) Align special levy imposition with qualifying period;
- (g) Non-participant exemptions for further special levies; and
- (h) Allow payments to multiple accounts.

The CSLR's prioritisation reflects its assessment of the relative impact each improvement would have on scheme sustainability and the timely payment of compensation to victims. Reducing the disallowance period is the most impactful because it directly addresses the delay between registration of the legislative instrument setting out CSLR's levy estimate and receipt of funds by the CSLR, with the aim of reducing the time claimants wait for their compensation.

¹⁰ As at 31 March 2025, the FSCS had bank facilities of £1,500m, comprising a Revolving Credit Facility of £1,450m (until 11 March 2027), and an overdraft facility of £50m. Based on the FSCS 2025 statutory accounts, the FSCS does not hold reserves. For the year ending 31 March 2025, total compensation paid by the FSCS was £326,979m and total levy income was £ 349,051m. See [FSCS Annual Report and Accounts 2024-25](#).

¹¹ The current minimum amount of the National Guarantee Fund is \$120m, as approved by the Minister on 29 January 2026. No claims were received for the year ended 30 June 2025. See [Securities Exchanges Guarantee Corporation](#).

4 Proposal 4: Revising the treatment of counterfactual loss for CSLR-eligible financial advice complaints

4.1 Introduction

The CSLR endorses the principle behind the counterfactual (or ‘but for’) approach and acknowledges its legitimacy. It also notes that any refinement to the treatment of counterfactual loss should be confined to CSLR-eligible claims, thereby preserving the integrity of AFCA’s determination process as it applies across the broader complaints framework.

Consistent with this, the CSLR supports a slightly different approach that is more aligned with the intent of the Scheme. In this regard, it recognises that AFCA generally determines loss in financial advice complaints using a counterfactual (or ‘but for’) approach, comparing the consumer’s actual position following the breach with the position they would reasonably have been in had the misconduct not occurred. The use of a counterfactual methodology can materially affect the amount ultimately payable by the CSLR.

The Options Paper presents two reform options:

- **Option 1** would limit CSLR-eligible compensation to capital losses only, assessed at the portfolio level across all investments subject to the relevant advice, with no counterfactual component.
- **Option 2** would prescribe the use of a counterfactual benchmark (such as CPI or the 10-year Australian Government bond rate) to standardise the rate of return used in calculating the counterfactual position.

4.2 Question 1: Do you support Option 1 or Option 2 to support scheme sustainability?

The CSLR supports any proposal that improves sustainability while remaining fair to victims. The extent of any reduction in claims costs will depend on the specific circumstances of each complaint. As illustrated below, variations in fact patterns, business practices, and investment profiles that gave rise to losses have resulted in materially divergent outcomes when the counterfactual methodology is applied across major financial firm failures. In the case of Dixon Advisory and Superannuation Services (DASS), the claims cost reductions, relative to the claimed amounts by the AFCA counterfactual basis, would have been significant (97%), because very few claimants lost capital in that case due to the particular circumstances. In other cases (e.g. UGC) the claims cost reductions would be lower (13%).

The CSLR supports capital loss as the appropriate basis for CSLR compensation but considers that the time value of money and the impact of inflation should be factored in for long-dated claims — for example, advice failures that become known only after a considerable period. Whichever option is adopted, it must drive sustainable outcomes across a broad range of claim scenarios and investment or loss time periods.

The CSLR considers it appropriate that AFCA determinations consistently include all relevant loss calculation details, including clearly articulated capital loss amounts. The provision of this information in a standardised and transparent form would enable the CSLR to assess claims more efficiently and facilitate the timely payment of compensation, regardless of the applicable processing pathway.

The table below sets out a hypothetical assessment prepared by CSLR's principal actuary, Finity Consulting, of the impact of the revised approach to counterfactual loss for CSLR-eligible financial advice complaints. This analysis was undertaken using a sample of 853 determinations and calibrated against the FY2026–27 initial estimate.

<i>Estimated CSLR claim cost reduction¹²</i>			
<i>Type</i>	<i>Capital loss only</i>	<i>Counterfactual at 10-year bond yield</i>	<i>Counterfactual at CPI</i>
<i>DASS</i>	97%	48%	57%
<i>UGC</i>	13%	7%	4%
<i>Brite</i>	38%	20%	30%
<i>Shield</i>	TBC		
<i>First Guardian</i>	TBC		
<i>Other</i>	21%	5%	10%

At a high level, the approach to estimating the alternate basis scenarios comprised two key steps. First, loss calculations from historical AFCA determinations (where available) were reviewed and re-estimated under each proposed scenario. Where sufficient determination history existed, this analysis was undertaken separately for each major financial firm failure. Given that the relevant data points are not readily captured within available datasets, AI-assisted extraction techniques were used to derive the necessary inputs from individual AFCA determination documents, supported by appropriate validation and quality assurance processes.

Secondly, the outcomes of this analysis were applied across each major financial firm failure to recalibrate assumptions regarding both the expected number of claims and average claim sizes under each scenario. This enabled an aggregate assessment of the potential impact on CSLR liabilities under the alternative counterfactual loss treatments.

While this analysis provides a robust initial view, it is necessarily subject to limitations arising from data availability and time constraints. A more granular assessment, incorporating additional information and further validation, would assist in refining these estimates.

4.3 Question 1.1: Are there alternative options that would better balance certainty, fairness and sustainability?

The CSLR does not propose any alternative options.

¹² Finity Consulting analysis, May 2026.

4.4 Question 2: What consideration should the Government have for choosing an implementation pathway?

The CSLR is supportive of the Government considering the following matters under either Option 1 or 2:

- **Speed of implementation.** Legislative change takes time and prolongs uncertainty for the CSLR and claimants. The CSLR supports an implementation pathway that can be progressed most efficiently.
- **Allocation of operational responsibility.** The CSLR's preference is that AFCA continue to undertake the calculation as part of its determination because this provides transparency and greater certainty to the claimant earlier in the process of seeking compensation than if the CSLR calculates it at the end of the process. If the CSLR is required to perform the capital loss calculations, the legislation would need to specify, clearly and in detail, the methodology, the information that AFCA must provide to the CSLR, and a mechanism to remit a determination back to AFCA for reassessment if circumstances change.
- **Treatment of in-flight matters.** There may be cases where a determination is issued while the firm is solvent, but the firm later becomes insolvent. The CSLR supports the Government's consideration of an implementation pathway that preserves the ability to revisit or recast determinations to ensure appropriate scheme coverage.

4.5 Question 3: Is CPI or Government Bond rate a more appropriate basis for calculating the counterfactual position?

The CSLR does not express a preference between CPI or the Government Bond rate.

The CSLR notes that the FSCS in the United Kingdom uses a benchmark basis.

4.6 Question 3.1: What alternative rate could be used?

The CSLR does not propose an alternative rate.

5 Proposal 5: Embedding greater certainty within the special levy framework

The Options Paper proposes the introduction of a rules-based special levy 'waterfall' framework to respond more predictably to large-scale, investment-related losses arising from personal financial advice misconduct where costs exceed the annual sub-sector levy caps. Under the proposal, any funding shortfall would be allocated sequentially across up to three tiers, reflecting the relative connection of sub-sectors to the underlying losses:

- **Tier 1:** the primary sub-sector (first payer) — the sub-sector whose annual levy cap has been exceeded;

- **Tier 2:** the connected sub-sector(s) (second payer(s)) — the sub-sector(s) whose products and/or services are identified as being connected to the losses; and
- **Tier 3:** the retail-facing sub-sectors (final **payers**, if necessary) — the remaining sub-sectors that operate as a defined backstop if any shortfall remains.

The proposed special levy caps would be:

- primary sub-sector up to \$20 million (in addition to the \$20 million annual levy cap);
- connected sub-sector(s) up to \$40 million per sub-sector; and
- retail-facing sub-sectors up to \$30 million per sub-sector.

Under this framework, a sub-sector may only be levied up to an absolute total of \$40 million in a levy period.

5.1 Question 1: Do you support introducing a rules-based three-tier special levy waterfall?

In principle, the CSLR supports the introduction of a rules-based three-tier special levy waterfall in a way which improves certainty. The current ministerial discretion is appropriately broad to accommodate the range of possible scenarios the CSLR may encounter; however, its application can be administratively complex and time intensive. The FY2025–26 process took approximately 12 months, noting that this was the first occasion on which the special levy was considered. The proposed reform would give industry the ability to plan against known sub-sector caps and reduce reliance on ad-hoc regulatory effort allocations.

However, the CSLR has concerns in respect of how Tier 2 will operate and recommends that further work and guidance be developed to clearly outline its proposed operation.

The CSLR also raises the question of how levy reconciliations might apply within this framework, and whether consideration needs to be given to reconciliations back to connected sub-sectors rather than the primary sub-sectors as currently outlined in the legislation.

The levy calculation and allocation of responsibility are based on forward estimates and may not reflect the actual claims eventually paid from the levy funds. For example, funding might be raised for a specific event tied to certain Tier 2 sub-sectors, but AFCA may later process claims from a different class, resulting in the CSLR paying claims for matters not connected to the originally identified Tier 2 sub-sectors.

5.2 Question 2: Is ‘connection’ an appropriate basis for allocating costs across tiers?

The CSLR does not express a view on this as it considers ‘connection’ to be reasonable in the circumstances. The CSLR recognises that ‘connection’ is conceptually distinct from fault and should not be characterised as such.

However, the CSLR has concerns about the uncertain nature of a term like ‘connection’ and recommends that further work and guidance be developed to clearly outline the proposed operation of the term.

The CSLR recommends that the end-to-end process for determining a special levy be clearly defined, including how information is used to inform forward-looking compensation estimates and how levy amounts are ultimately set.

The CSLR also proposes an ability to inform the Minister of its forward-looking estimate at a time earlier than 1 July each year, in order to reduce the funding time and allow victims to receive compensation earlier. This could be included as an additional technical improvement by making adjustments to section 10 of the Levy Collection Act.

5.2.1 Question 2.1: If not, what alternative approach should be used?

The CSLR does not express a view on this as it considers ‘connection’ to be reasonable in the circumstances.

5.2.2 Question 2.2: How should ‘connected’ sub-sector(s) be identified in practice?

The CSLR has no specific views on the definition of ‘connection’ but raises the following practical considerations:

- (a) The retail-facing sub-sectors must be carefully mapped so that they are stable year-on-year; to support the framework being repeatable in practice.
- (b) Identification cannot rely solely on AFCA case-level information; event-level or firm-failure-level information is more appropriate, particularly for events such as UGC where multiple events are wrapped up within a single firm failure and where the underlying investment does not map neatly to a sub-sector.
- (c) The framework relies on data-sharing arrangements that require further consideration beyond the initial reference in the Options Paper. The legislative and operational architecture for sharing connection-related data should be clearly articulated.
- (d) The framework should expressly preserve a residual Ministerial discretion to moderate outcomes where rigid application would produce anomalies. For example, in the early stages following the failure of a financial firm, when investigations and related proceedings are ongoing, the CSLR may be required to prepare levy estimates in circumstances where the identification and attribution of connected sub-sectors is inherently uncertain.

5.3 Question 3: What evidence or data should be used to establish ‘connection’?

The CSLR supports event- and firm-failure-level information, rather than case-level information, as the primary evidentiary basis for establishing ‘connection’.

The CSLR notes that what is required is a clear delineation between fault and ‘connection’, with language that recognises information about relationships and connections between entities based on objective metrics, such as operations around investment, guidance or advice that might form part of the event chain.

5.3.1 Question 3.1: What governance or assurance steps would improve confidence in classification?

The CSLR does not express a specific view on this, however, it recognises that independent expert input could be helpful, e.g. expert actuarial input given the forecasting and apportionment modelling that could be involved.

The CSLR further recognises the timing pressure: the CSLR makes its initial and revised cost estimates on a forward-looking basis at fixed points in the year, while the connection assessment is necessarily evidence-driven and unfolds over time.

5.4 Question 4: Are the proposed special levy caps appropriately calibrated?

The CSLR does not express a definitive view on the calibration of the proposed special levy caps. The CSLR accepts the policy logic that caps should be set at a level the relevant sub-sector has the capacity to sustain.

5.4.1 Question 4.1: If not, at what level should special levy caps be set?

The CSLR does not express a view on this.

6 Proposal 6: Considering responses to the role of SMSF losses in pressure on the CSLR

6.1 Introduction

Under the current settings, self-managed super funds (**SMSFs**) are eligible to receive compensation from the CSLR where the trustee or beneficiary received personal financial advice and there is a resulting unpaid AFCA determination in relation to this advice. The Options Paper presents two options:

- Option 1 to include a subset of SMSFs within the CSLR special levy framework, and
- Option 2 to exclude all SMSFs from CSLR eligibility.

The CSLR reports that SMSF claimants account for approximately 93% of paid and pending CSLR cases, and most financial advice misconduct cases to date involve advice provided to SMSFs. The CSLR recognises that SMSFs themselves do not commit harm — the harm is committed by bad actors providing poor advice, and a framework that treats SMSFs as ‘inherently bad’ would be philosophically uncomfortable for a scheme whose role is to compensate victims of misconduct.

6.2 Question 1: Do you see merit in levying a subset of SMSFs?

The CSLR does not express a view about the appropriateness of levying SMSFs.

6.3 Question 2: Which mechanism best balances scheme sustainability?

If SMSFs are subject to a levy, the CSLR recommends that it apply consistently to all SMSFs, without an opt-in or opt-out mechanism, to support scheme sustainability, administrative simplicity, and efficiency, and to minimise costs across the sector.

Of the two mechanisms proposed in the Options Paper, the CSLR prefers an opt-out mechanism over an opt-in mechanism. This is in recognition that an opt-out mechanism would reduce adverse selection; under opt-in, it is reasonable to assume that an increased proportion of SMSFs that perceive themselves as at risk would therefore participate, which would undermine the levy base and concentrate risk.

However, the CSLR emphasises the importance of robust education and advice requirements such that SMSF trustees who elect to opt out understand that they would be giving up CSLR eligibility for the life of the SMSF. Without that understanding, trustees could be persuaded to opt out without appreciating the consequences.

If any change to levying SMSFs were to be adopted, the CSLR would need to understand whether claims could be made retrospectively and what transition arrangements would apply.

6.3.1 Question 2.1: What factors should be considered to minimise regulatory burden?

The CSLR notes that it may be helpful to require advice from an appropriate professional (for example, a financial planner) as a precondition to opting out, in a manner similar to certificate regimes used in family law superannuation splitting.

The CSLR also notes the evidentiary and administrative challenges in any opt-in or opt-out model. For example, there would be a need for a centralised register of opt-out or opt-in elections — a formal, centrally maintained register would be essential to administer eligibility decisions.

6.4 Question 3: Would allowing SMSFs to opt out be an appropriate means to target the levy?

The CSLR prefers an opt-out mechanism over an opt-in mechanism.

The principal benefits of an opt-out mechanism are that it:

- (a) preserves CSLR coverage as the default for SMSF trustees, consistent with the scheme's consumer-protection rationale;
- (b) reduces adverse selection compared to opt-in; and
- (c) is administratively simpler to implement at scale, for example, via the ATO.

The principal risks are:

- (a) SMSFs may be persuaded to opt out without fully appreciating that they are foregoing CSLR compensation eligibility entirely, including for past and future advice-related claims connected to the SMSF, which has severe consequences and will need to be clearly disclosed. However, this risk could be mitigated with appropriate professional advice;

- (b) the opt-out election would create a binary outcome that may be disproportionate where an SMSF has multiple trustees with different views; and
- (c) opt-out elections would need to be monitored to prevent retrospective opt-in following a known adverse event.

6.5 Question 4: When should an SMSF be required to opt out or begin paying?

The CSLR does not express a view on this but requests clarity on timing and the eligibility consequences – for example, whether opt-out applies only to future events or captures past claims not yet forming the basis of an AFCA determination. The CSLR notes that the Shield and First Guardian fact patterns illustrate the complexity of any ‘past claims’ carve-out.

6.6 Question 5: Should an SMSF be able to revoke their decision?

The CSLR considers that revocation would create gaming risk (that is, an SMSF could opt back in once it becomes aware of a potential claim) which would undermine the integrity of the levy base, and be administratively complex. The CSLR is of the view that an opt-out election should be irrevocable (‘opt out for life’).

6.7 Question 6: Would allowing SMSFs to opt-in be appropriate?

The CSLR's preference is for an opt-out mechanism rather than opt-in.

However, the resulting levy base under an opt-in approach would likely be too narrow to provide a meaningful and sustainable benefit, and the framework would risk producing a small cohort effectively cross-subsidising the scheme.

The CSLR also raises a number of operational issues with the opt-in mechanism:

- It is unclear which entity would collect, hold and store the opt-in elections — the Options Paper refers to ‘existing SMSF levy or reporting processes’, but the underlying mechanism is not described.
- It is unclear whether the CSLR would be expected to verify an opt-in election as evidence of eligibility at the point of determining a compensation claim.
- There is a high probability of inadvertent failure to opt in, because the decision requires active engagement at a time when a future compensation payout is not foreseeable, and trustees may focus on the savings from not paying the levy rather than not being eligible in the future.

6.8 Questions 7 and 8: Timing and eligibility impact of opting in

The CSLR does not express a view on this.

6.9 Question 9: What is a reasonable and sustainable maximum annual levy per SMSF?

The CSLR does not express a view on this.

6.10 Question 10: How does excluding SMSFs from CSLR eligibility compare to Option 1?

The CSLR is cautious on this approach and does not support the full exclusion of SMSFs, particularly where the SMSF's has been advised, from CSLR eligibility in light of the observations made in 6.1 above. While exclusion is administratively simpler and would deliver a clearer and larger sustainability gain than Option 1, it must be weighed against fundamental redress principles that underpin the establishment of the CSLR scheme.

The CSLR wishes to highlight the following:

- (a) **Reputational impact.** Excluding SMSFs would produce a material reputational impact on the CSLR's 'last resort' narrative, since SMSF members would be a very large cohort of eligible consumers that the scheme exists to protect.
- (b) **Shifting of pressure.** Pressure would shift to courts and liquidators, with limited prospect of recovery for affected consumers.
- (c) **Equity concerns.** Exclusion would create significant equity concerns for misconduct-driven losses where the SMSF structure is incidental to the harm.
- (d) **Upstream problem unaddressed.** Exclusion would not address the underlying problem that poor financial advice continues to be provided in the SMSF space.

In this context, the distinction drawn in the Options Paper between investment risk and misconduct risk is critical. The CSLR is not directed to compensate consumers for market movements, product underperformance or poor investment decisions. Rather, it is enlivened where an eligible claimant has suffered from an eligible type of financial sector misconduct, has an unpaid AFCA determination awarding monetary compensation, and other eligibility criteria are met. The relevant policy question is therefore not whether SMSFs should be insulated from investment losses, but whether SMSF trustees – like other consumers – should continue to have access to redress where loss arises from misconduct and results in an unpaid determination.

The CSLR's preference is qualified support for Option 1, together with a future-focused observation (rather than a policy request) regarding the need for greater scrutiny of the SMSF advice space and clearer articulation of SMSF trustee responsibilities, given the projected growth of the sector and its significant contribution to scheme costs.

7 Proposal 7: Facilitating levying of Managed Investment Scheme (MIS)-related losses

7.1 Introduction

The CSLR recognises that recent high-profile MIS collapses have highlighted ongoing consumer exposure to the risk of large losses when investing in MISs. Consumer losses caused directly by the operation of a MIS are not within the scope of AFCA determinations and consequently the CSLR. However, consumers may be eligible for CSLR compensation relating to losses in MIS investments where an AFCA complaint relates to one of the eligible products and services in scope of the CSLR —

in practice, where the consumer received financial advice to invest in the MIS with the advice being found to involve misconduct.

If the Government were to introduce a special levy waterfall framework as outlined in Proposal 5, the CSLR understands that the MIS sector would likely be one of the sub-sectors 'connected' to underlying losses.

7.2 Question 1: Should the Government identify a 'lower-risk' segment of the MIS sector not subject to the special levy?

The CSLR is supportive of a special levy being applied to MISs to improve the sustainability of the CSLR. The CSLR does not have a preference between Option 1 and Option 2, but observes that, on a practical level, Option 2 is unlikely to be workable in the short to medium term given that the data and reporting infrastructure required to differentiate higher-risk from lower-risk MISs is not part of the current framework.

The CSLR also notes that the levy reconciliation considerations raised in response to Proposal 5 will be relevant to how a MIS special levy operates in practice.

7.2.1 Question 1.1: What indicators should be used to identify a MIS as low risk?

The CSLR does not express a view on this.

7.2.2 Question 1.2: Would this option create additional regulatory burden for the MIS sector?

The CSLR does not express a view on this.

7.3 Question 2: What would be the consequences of excluding low-risk MISs from the special levy?

The CSLR does not express a view on this.

7.4 Question 3: How should the Government weigh the trade-off between minimising administrative costs and a more targeted approach?

The CSLR does not express a view on this but raises the overarching objective of reducing demand on the CSLR and the following practical considerations. The CSLR notes that the diversity of the MIS sector, with as at 30 June 2025, 3,587 registered MISs and 405 responsible entities and around \$2 trillion currently invested in registered MISs, presents significant challenges in designing an equitable, transparent and administratively efficient levy approach (paragraph 172 of the Options Paper).

One approach for minimising administrative costs is to consider the approach adopted by the United Kingdom Financial Conduct Authority's (**FCA**), which has a 'Firm Checker' on its website allowing users to check whether the firm is authorised by the FCA and has the FCA's permission to provide the

relevant financial products and services.¹³ A similar mechanism for MISs could provide a signal to consumers of the risk level associated with an MIS. That said, this approach would need to be administered by a body other than the CSLR.

8 Proposal 8: Improving recovery of unpaid AFCA determinations within corporate groups

8.1 Introduction

The CSLR recognises the importance of the policy objectives underlying this proposal.

Unpaid AFCA determinations that flow through to the CSLR can shift costs onto the broader sub-sector, including in situations where the respondent firm is part of a corporate group whose other entities remain solvent and continue trading.

There may be instances of phoenixing or in some cases, the respondent firm may have entered external administration while other solvent entities within the group may have benefited, or may continue to benefit, from transferred advisers, clients, contractual rights, goodwill, or other business assets, leaving the AFCA liabilities with the insolvent entity.

In this regard, some stakeholders have pointed to the Dixon Advisory collapse as an example of misalignment between where value is retained and where liabilities fall. The CSLR shares the concern that such situations increase pressure on the broader sector that funds the CSLR.

8.2 Question 1: To what extent are AFCA determination liabilities avoided through misuse of corporate and insolvency frameworks?

The CSLR's operational experience indicates that there are circumstances in which value has been transferred from a respondent firm to related entities prior to or during insolvency, leaving insufficient assets to meet AFCA determination liabilities and shifting those costs to the broader sub-sector through the CSLR levy process.

In this regard, the CSLR notes the Financial Advice Association's public submissions that during the liquidation process for Libertas Financial Planning Pty Ltd (in liquidation) (**Libertas**), Sequoia Financial Group (the parent company of Libertas) transferred the assets and clients out of Libertas to InterPrac Financial Planning and Sequoia Wealth Management.

Set out below are some further hypothetical examples that illustrate the ways in which corporate and insolvency frameworks can be used to shift assets or value away from the entity that bears the AFCA liability:

¹³ See [FCA Firm Checker](#) | [FCA](#).

- (a) A corporate group includes multiple AFSL-holding entities, each employing financial advisers. One entity ('Subsidiary A') provides advice that causes significant consumer harm. As complaints accumulate and the potential liability becomes apparent, the advisers (and their client books) are transferred to a different entity within the group ('Subsidiary B'), or to a newly created entity. Subsidiary A (now stripped of its revenue-generating assets), is unable to pay the resulting AFCA determinations and enters external administration. The parent company and Subsidiary B continue to operate, retaining the revenue streams generated by the transferred advisers and clients. The AFCA determination liabilities remain with the insolvent Subsidiary A and ultimately flow through to the CSLR and are funded by the broader sub-sector through levies.
- (b) A parent company acquires a financial advice subsidiary. Over a period of years, the parent extracts revenue from the subsidiary through dividends, inter-company loans or other related-party transactions, reducing the subsidiary's capital base. When AFCA determinations are made against the subsidiary, it has insufficient assets to pay. The subsidiary enters external administration.

The CSLR accepts that legitimate reasons exist for transferring advisers and clients between related entities, including risk management, growth, and succession planning. However, the current framework does not address situations where the practical effect of such transactions is to leave AFCA liabilities with an entity that cannot pay, while the benefit of the underlying business is retained elsewhere.

8.3 Question 2: Are there gaps or limitations in the current corporate and insolvency frameworks?

Treasury's Option 1 proposes refinements to existing corporate and insolvency frameworks to deter inappropriate transfer of value while the company remains solvent. This option focuses on the effectiveness of existing frameworks, being directors' duties, related-party transaction rules, and voidable transaction provisions, in deterring the shifting of assets or value away from the respondent firm.

The CSLR notes that Option 1 places the solution in mainstream corporate and insolvency law, which may take significant time to implement. Given any changes would not be to the CSLR itself, the CSLR's ability to influence outcomes directly would be limited. The CSLR is therefore cautious about this option, while acknowledging the importance of effective deterrence mechanisms within the broader legal framework.

8.4 Question 3: If a new related-entity liability mechanism was established (Option 2), how should it be designed?

The CSLR agrees there is a need for greater accountability of parent and related companies with the aim of achieving better outcomes for claimants. The CSLR further agrees that any related-entity liability mechanism must be proportionate, have appropriate safeguards and regard to longstanding principles of corporate law. Accordingly, the CSLR supports Option 2 and requests that the following matters be considered by Treasury in relation to this Option.

- (a) **CSLR levy framework:** The first implementation pathway proposed for Option 2 is to leverage the existing CSLR levy framework. Amendments to existing legislation could enable the CSLR to allocate a defined portion of its estimated costs to related entities that satisfy the benefits

test and safeguard mechanism. This pathway gives the CSLR more control and would allow it to forecast the portion of its estimated costs that satisfy the tests. However, there are significant issues with this pathway, including:

- (i) the scope of the 'benefits test' and the 'safeguard mechanism' would need to be clearly defined, as any ambiguity could result in administrative issues for the CSLR in determining whether the tests are met, and could result in a 'related entity' challenging the CSLR's assessment. The benefits test may also raise complex questions regarding tracing assets, the level of causal connection between the benefit and the relevant firm's impugned conduct, and the extent to which legitimate transactions and restructures are impacted;
 - (ii) the need for greater information sharing between AFCA, ASIC and the CSLR to ensure that related entities are identified at an early stage and the CSLR has sufficient information to determine whether the tests are satisfied (with enough time to allow this to be built into CSLR's cost estimates and levy processes);
 - (iii) the proposal assumes that related entities have the capacity to pay. Any amendments to legislation should consider what happens in the event they cannot – for example, where the related entity is itself in financial difficulty. To the extent there are changes in what the CSLR actually processes in a given year and claims relating to a financial firm or its related entity are not ultimately processed, consideration should be given to what processes might be available to conduct reconciliations of funding for future years;
 - (iv) imposition of any liability on a related entity will raise issues regarding procedural fairness (including notice and hearing requirements), disclosure of documents (including privilege issues), attribution and apportionment of liability between multiple related entities, and avenues for appeal; and
 - (v) there exists a risk that the CSLR takes on the role of a quasi-regulator by implementing the benefits test and safeguard mechanisms, making third-party liability decisions and enforcing recovery.
- (b) **AFCA scheme:** The second implementation pathway proposed for Option 2 is to amend the AFCA scheme either to join live parties to a complaint so that the responsibility of the related body corporate can be addressed within the AFCA process, or to impose liability on related entities after the AFCA determination is made. This method allows for complaints to be resolved before they reach the Scheme, thereby reducing the cost burden on the CSLR and the broader sub-sector. However, the CSLR acknowledges there may be practical difficulties and challenges with this approach, which AFCA is best placed to comment on.

A further threshold question that requires consideration is the point in time in which corporate group relationships should be assessed. Any proposed legislation should clarify whether the relevant relationship is assessed at: (a) the time of the inappropriate conduct that caused the loss; (b) at the time of the AFCA determination; (c) at the time the determination becomes unpaid; or (d) based on the current relationships at the time the mechanism is enlivened. This question has significant implications for the scope and practical application of any benefits test.

The CSLR is willing to engage further with Treasury and other stakeholders on the design of whichever pathway (or combination of pathways) the Government determines is most appropriate.