

SUBMISSION

Submission to Senate
Economics Legislation
Committee: *Financial
Services Compensation
Scheme of Last Resort Levy
Bill 2022* and related Bills

7 October 2022

**The Association of Superannuation
Funds of Australia Limited**
Level 11, 77 Castlereagh Street
Sydney NSW 2000

PO Box 1485
Sydney NSW 2001

T +61 2 9264 9300
1800 812 798 (outside Sydney)

F 1300 926 484

W www.superannuation.asn.au

ABN 29 002 786 290 CAN 002 786 290

File: 2022/13

Committee Secretary
Senate Economics Legislation Committee

Via email: economics.sen@aph.gov.au

7 October 2022

Dear Committee Secretary

Financial Sector Reform Bill 2022, Financial Services Compensation Scheme of Last Resort Levy Bill 2022 and Financial Services Compensation Scheme of Last Resort Levy (Collection) Bill 2022

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission in response to the Committee's inquiry into Bills which, in combination, establish the frameworks for the financial services compensation scheme of last resort (CSLR).

About ASFA

ASFA is a non-profit, non-political national organisation whose mission is to continuously improve the superannuation system, so all Australians can enjoy a comfortable and dignified retirement. We focus on the issues that affect the entire Australian superannuation system and its \$3.3 trillion in retirement savings. Our membership is across all parts of the industry, including corporate, public sector, industry and retail superannuation funds, and associated service providers, representing almost 90 per cent of the 17 million Australians with superannuation.

If you have any queries or comments in relation to the content of our submission, please contact Julia Stannard, Senior Policy Advisor on (02) 8079 0838 or by email jstannard@superannuation.asn.au.

Yours sincerely

Julian Cabarrus

Director – Policy Operations, Member Engagement & External Relations

Bills to establish the financial services CSLR

In combination, the *Financial Sector Reform Bill 2022*, the *Financial Services Compensation Scheme of Last Resort Levy Bill 2022* and the *Financial Services Compensation Scheme of Last Resort Levy (Collection) Bill 2022* (collectively referred to in this submission as the 'CSLR Bills') establish the frameworks for the CSLR and for the levy to fund both the operation of the CSLR and the compensation paid under it.

Under the CSLR Bills, the CSLR is limited (broadly) to providing capped compensation where a person has accepted a 'relevant determination' made by the Australian Financial Complaints Authority (AFCA) against an AFCA member, the determination remains unpaid after 12 months despite steps taken by AFCA to secure payment, and the CSLR operator reasonably believes the AFCA member is, having regard to their financial position, unlikely to fully pay the amount. The scope of the CSLR is further restricted, by virtue of the proposed definition of 'relevant AFCA determination', to apply only to determinations about three specific categories of financial products and services:

- engaging in a credit activity
- dealing in securities for a person as a retail client (other than issuing securities)
- providing financial product advice that is personal advice to a retail client about products that include at least one relevant financial product.

The model adopted in the CSLR Bills is the result of an extensive process of consultation, across many years and many inquiries and reviews. ASFA considers the proposed model to be appropriately targeted.

ASFA welcomes the implicit recognition that many sub-sectors of the financial services industry have not contributed to the issue of uncompensated losses historically, are unlikely to do so going forward, and therefore should not be required to contribute toward the funding of that liability. As we have noted in many previous submissions in relation to the CSLR, the APRA-regulated superannuation sector operates under prudential regulation and extensive legislative constraint. We are unaware of any instance where a determination made against an APRA-regulated superannuation fund by AFCA or its predecessor the Superannuation Complaints Tribunal has gone unpaid. We further note that the sector has an established sector-funded mechanism to address eligible losses suffered by an APRA-regulated fund as a result of fraud or theft (part 23 of the *Superannuation Industry (Supervision) Act 1993*).

We note that the CSLR Bills provide a mechanism to address situations where additional funding may be needed by the CSLR, beyond the amount raised by the annual levy on the 'primary sub-sectors' (those that provide the specific categories of financial products and services covered by the CSLR). The Explanatory Memorandum cites the examples of a large financial firm becoming insolvent, or a 'black swan event' occurring in the financial services industry. The Bills provide the Minister with the power to determine an additional 'special' levy to be paid by the primary sub-sectors in which the compensation liability arose. Significantly, the Bills also allow for the Minister to determine that a special levy should also be paid by sub-sectors that are not liable to pay the annual levy — those which are not 'primary sub-sectors'.

It is imperative that the power to charge this special levy on sub-sectors not liable to pay the annual levy should be used only in the most extreme of circumstances. Further, we consider that any special levy for a period should only be determined following consultation with the industry in relation to the proposed special levy amounts and the sub-sector(s) on which it will be imposed.

We maintain our long-standing view that the CSLR model should avoid cross-subsidisation by the APRA-regulated superannuation sector of losses incurred within other sectors, or in relation to financial services that are not provided by the APRA-regulated superannuation sector. Compensation payable by the CSLR for any large failures must be funded by the (sub)sector(s) in which those events occurred and must not be spread more broadly across the industry.

Recommendation

Providing certainty around the levies to support the CSLR

ASFA recommends that:

- A special levy under the CSLR should only be imposed on entities not subject to the annual levy in extreme circumstances.
- Any special levy should only be determined following consultation with the industry in relation to the proposed amount of the special levy and the sub-sector(s) on which it will be imposed.