# SUBMISSION

## Submission to Treasury — Financial Services Royal Commission – Compensation Scheme of Last Resort consultation

16 August 2021

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Financial System Division

The Treasury

Langton Crescent

PARKES ACT 2600

Via email: CSLR@treasury.gov.au

16 August 2021

Dear Sir/Madam

**Financial Services Royal Commission – Compensation Scheme of Last Resort consultation**

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission in response to the Financial Services Royal Commission – Compensation Scheme of Last Resort consultation.

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 $3.1 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 16 million Australians with superannuation.

If you have any queries or comments in relation to the content of our submission, please contact me on (02) 8079 0808 or by email gmccrea@superannuation.asn.au, or Byron Addison, Senior Policy Advisor, on (02) 8079 0834 or by email baddison@superannuation.asn.au. We would welcome the opportunity to discuss our submission and look forward to engaging with you throughout the process to establish the compensation scheme.

Yours sincerely

Glen McCrea
Deputy Chief Executive Officer and Chief Policy Officer

# A. Executive summary

ASFA endorses the exposure draft legislation that would establish a Compensation Scheme of Last Resort (CSLR).

The CSLR which has been developed to address this issue has had a long gestation and we are pleased that the funding model developed as a result of extensive consultation with the financial services industry targets those sectors where unpaid determinations are most likely to be found and avoids cross-subsidisation to a great extent.

We note that superannuation trustees are not in scope for the funding model which is appropriate as there are already legislated arrangements to replenish assets through a sector-funded superannuation compensation scheme in the cases of fraud or theft

ASFA has previously argued that basic considerations of equity require the cost of funding unpaid compensation to be substantially borne by the (sub)sectors of the industry that have generated that liability and we welcome the incorporation of this approach broadly in the CSLR funding model.

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# B. Cross-subsidisation

### B.1 Unpaid determinations are unlikely ever to occur in the Regulated superannuation funds sector

ASFA acknowledges that historic data as to the number, value, and source of unpaid determinations does not fully represent the likely future experience and we also acknowledge that the distribution of unpaid determinations between segments of the financial services industry is likely to change over time.

However it should also be acknowledged that the experience of the APRA-regulated superannuation sector, in respect of payment of determinations by AFCA and its predecessor scheme the Superannuation Complaints Tribunal (SCT), is different from other sectors and that unpaid determinations are unlikely to occur within the regulated superannuation sector.

AFCA has confirmed that, since its commencement on 1 November 2018, no determination issued against an APRA-regulated superannuation fund has remained unpaid and, as noted by the Ramsay Review:

> In the case of superannuation disputes, as at 2 May 2017, **the Superannuation Complaints Tribunal had no outstanding unpaid determinations**. This is due to the nature of prudential regulation in the superannuation system, which means it would be **rare for a superannuation fund to be unable to pay its obligations**.[1]

Trustees of APRA-regulated superannuation funds are subject to extensive legislative and prudential requirements as well as overarching fiduciary duties designed to ensure that funds are operated in the best financial interests of members. 'Phoenix' behaviour, which has been observed within the broader financial advice sector, has not been a concern in the APRA-regulated superannuation sector and is unlikely, given the substantial regulatory barriers to securing registrable superannuation entity licensee status.

### B.2 The existing compensation scheme for superannuation is effective

A compensation scheme already exists for the APRA-regulated superannuation sector.

Part 23 of the *Superannuation Industry (Supervision) Act 1993* (SIS Act) provides protection for members of a regulated superannuation fund (other than a self-managed superannuation fund) or an approved deposit fund, where there has been a loss as a result of fraudulent conduct or theft, causing substantial diminution of the fund leading to difficulties in the payment of benefits. Where an 'eligible loss' has been established, the Minister may approve a grant of financial assistance to the trustee of the impacted fund.

To date, Part 23 has been used only a handful of times since it was established in 1993, with levies raised to recoup grants of financial assistance that primarily relate to two main incidents of fraud or theft. These affected the members of superannuation funds formerly under the trusteeship of Commercial Nominees of Australia Limited and Trio Capital Limited. In each case, a levy was raised on all APRA-regulated funds to recoup the amount of the grant initially provided by the Government–that is, the compensation that was provided was entirely funded from within the APRA-regulated superannuation sector, with no contribution from other sectors.

ASFA is of the view that the Part 23 regime is an appropriate and effective means of providing compensation for losses due to fraud or theft within the APRA-regulated superannuation sector and we are pleased that the CSLR design takes this existing model into account.

[1] Ibid., paragraph 122