

SUBMISSION

Submission to Treasury — Compensation Scheme of Last Resort — post implementation review

28 February 2025

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Director

Programs and Redress Unit

Treasury

Via email: CSLRreview@treasury.gov.au

28 February 2025

Dear Sir/Madam

Compensation Scheme of Last Resort – post-implementation review

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission in response to the post-implementation review of the Consultation Scheme of Last Resort (CSLR).

About ASFA

ASFA has been operating since 1962 and is the peak policy, research and advocacy body for Australia's superannuation industry. ASFA represents the APRA regulated superannuation industry with over 100 organisations as members from corporate, industry, retail and public sector funds, and service providers.

We develop policy positions through collaboration with our diverse membership base and use our deep technical expertise and research capabilities to assist in advancing outcomes for Australians.

ASFA has a keen focus on matters that impact the outcomes achieved by individuals through the superannuation system, their experiences with the system, and issues that impede the industry's operational effectiveness

General Comments

ASFA welcomes the post-implementation review of the CSLR. The Scheme undertakes dual functions, each equally important, to address undischarged compensation owed to individuals and reinforce consumer confidence in the financial services industry as a whole.

Given current concerns regarding the funding needs of the scheme and the burden that imposes on impacted sectors of the financial services industry, the review provides an important opportunity to re-examine the scheme's funding mechanism ensure it is operating in a sustainable manner. It is also timely to re-consider the scope or coverage of the CSLR, based on up-to-date data pinpointing where in the industry uncompensated losses are arising.

We note that it is important to ensure that personal financial advice is accessible and affordable. We acknowledge concerns raised by other stakeholders regarding the decline in the number of financial advisers and the impact that the CSLR model in its current form can have on the direct costs of those advisers who have not themselves contributed to the uncompensated losses. We further acknowledge that this may be a factor influencing decisions by potential new entrants to the sector.

That aside, ASFA notes there is no data suggesting undischarged compensation is an issue within the APRA-regulated superannuation sector. We maintain our long-standing position that there should be no cross-subsidisation from the APRA-regulated superannuation sector in respect of undischarged compensation arising in other sub-sectors or in relation to products and services not provided by the APRA-regulated superannuation sector.

Balancing the role of the CSLR and the burden imposed on the industry

It is vital to maintain consumer confidence in the financial services industry. Inevitably, that confidence is diminished when a consumer does not receive the compensation due to them in relation to a dispute with their provider.

We are deeply sympathetic to the plight of consumers who have been unable to obtain payment of compensation to which they are entitled. It is important that appropriate arrangements are in place deal with such cases.

However, it is important to recognise that the issue of unpaid compensation is not widespread across the industry – it is limited to particular sectors. Any implication that the issues are wider spread has the potential to impact consumer confidence in the industry overall.

Given the CSLR is industry-funded, it is also critical that it operates in a way that is sustainable and equitable, avoids overburdening any particular sub-sector, and yet also avoids inappropriate cross-subsidisation between sub-sectors to the extent possible. We acknowledge there is an inherent difficulty in balancing these considerations.

Funding of the CSLR

ASFA has provided submissions over several years in response to the ‘Ramsay Review’ of the financial services external dispute resolution (EDR) system¹ that considered the need for a CSLR, and to Treasury and the Senate Economics Legislation Committee during the development and passage of the legislation underlying the current CSLR.

We maintain our long-standing positions in relation to the CSLR. These can essentially be summarised as follows:

- 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.
- ASFA is unaware of any instance where a determination made by the Australian Financial Complaints Authority (AFCA) or its predecessor the Superannuation Complaints Tribunal against an APRA-regulated superannuation fund has remained unpaid.

The sector operates under prudential regulation and extensive legislative constraint – including the obligation to act in the best interests of members. Superannuation funds have substantial assets and even in cases of fraud or theft there are legislated arrangements to replenish assets through a sector-funded compensation scheme (Part 23 of the *Superannuation Industry (Supervision) Act 1993*). Taking these factors into account, prior reviews into the need for a CSLR have rightly accepted that it would be rare for an APRA-regulated superannuation fund to be unable to pay its obligations².

¹ Review of the financial system external dispute resolution and complaints framework, [Supplementary Final Report](#), September 2017, para 2.44-2.45

² Richard St John, [Compensation arrangements for consumers of financial services](#), April 2012, para 6.51; Review of the financial system external dispute resolution framework: [Consultation on the establishment, merits and potential design of a compensation scheme of last resort and the merits and issues associated with providing access to redress for past disputes - Supplementary Issues Paper](#), May 2017 (Supplementary Issues Paper), para 122

- The legislated CSLR model implicitly recognises that many sub-sectors of the financial services industry – including the APRA-regulated superannuation sector – 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.
- Currently – and, in ASFA’s view, appropriately – the CSLR has only a very narrow scope of potential operation in relation to APRA-regulated superannuation. This is limited to a potential scenario in which a substantial compensation liability exists in relation to AFCA determinations made against an APRA-regulated fund for defective personal advice provided under its Australian Financial Services licence (AFSL) **and** the fund is unable to honour that liability because it is effectively insolvent. The likelihood of this scenario arising is, in ASFA’s view, extremely low. Nonetheless, funds do currently bear a share of the CSLR’s annual funding cost in relation to the provision of personal financial advice. That is, funds are ‘in scope’ to the extent personal advice is provided under an AFSL they hold.
- The CSLR model should avoid any broader 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. We note there is – appropriately – no expectation that financial firms outside the APRA-regulated superannuation sector should contribute to any compensation paid under the sector’s Part 23 compensation scheme.

- It is imperative that the Ministerial power to impose a special levy on sub-sectors not liable to pay the annual CSLR funding levy is used only in the most extreme of circumstances. Further, 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.

It is important for the Review to consider issues raised by industry regarding the calculation of the compensation amounts funded through the CSLR levy. ASFA also agrees with the view – widely expressed throughout the industry – that there is a need to closely scrutinise the level of ‘administrative’ costs associated with the CSLR. There is a broader economic impact of the CSLR levy – financial services providers levied to fund the CSLR will, directly or indirectly, pass that cost on to the consumers of their services, and/or to their shareholders through reduced returns. It is imperative that the CSLR operator conducts itself in a manner designed to minimise these costs.

We further note concerns regarding the quantum of levies and their potential impact on the sustainability of some financial advice practices and models. With a significant portion of the population nearing or entering retirement, we note there has never been a greater need to ensure that expert financial advice is readily and affordably available to those who choose to seek it.

Scope of the CSLR

The initial coverage of the CSLR was based on data about uncompensated losses that was, inevitably, imperfect. It was widely acknowledged that historic data as to the number, value, and source of unpaid determinations would not fully represent the likely future experience, as claims that would not have proceeded prior to the establishment of the CSLR, and therefore went unrecorded (for example due to the insolvency of the financial services provider), can now be heard by AFCA. Many consumers would simply not have pursued action against insolvent providers and therefore their potential claim for compensation was not reflected in the data available when the CSLR was under development.

It is, in ASFA's view, an opportune time to reconsider the sub-sectors that are 'in scope' for the CSLR, to ensure the scheme is appropriately targeted. However, we are strongly of the view that any extension beyond the presently 'in scope' sub-sectors would only be appropriate where there is compelling evidence of undischarged determinations – that is, uncompensated losses.

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 0819 or by email Jstannard@superannuation.asn.au.

Yours sincerely

James Koval

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