

SUBMISSION

Submission to Treasury —
Compensation Scheme of
Last Resort – enhancing
professional indemnity
insurance

13 February 2026

**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: 2026/08

Lodged via Treasury consultation portal

13 February 2026

Dear Sir/Madam

Compensation Scheme of Last Resort – enhancing professional indemnity insurance

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission in response to Treasury's consultation paper on enhancing the effectiveness of financial services professional indemnity insurance.

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.

Review of the CSLR is welcome and necessary

We welcome the Government's intention to undertake a broad review of the Compensation Scheme of Last Resort (CSLR) and look forward to participating in foreshadowed consultations on reducing the consumer harm that leads to claims on the Scheme, and on the Scheme's scope of coverage.

ASFA has made numerous submissions in relation to the development of the CSLR, including most recently to the post-implementation review and options for addressing the present excess over the financial advice sub-sector levy cap. Our response to the current consultation reflects and builds on our long-standing advocacy.

ASFA agrees that consumer confidence in financial services is adversely impacted when a consumer does not receive the compensation due to them in relation to a dispute with their provider, and we acknowledge the plight of consumers who have been unable to obtain payment of compensation to which they are entitled. Appropriate arrangements are needed to deal with such cases.

For this reason, ASFA has been supportive of an *appropriately scoped* CSLR – that is, one that is targeted to those areas where there is significant evidence of uncompensated losses and avoids cross-subsidisation between sectors, particularly sectors that have not experienced significant uncompensated losses.

As noted in our prior advocacy, it is important to recognise that:

- there is **no data** suggesting undischarged compensation is an issue within the APRA-regulated superannuation sector
- APRA-regulated funds already contribute to funding of the CSLR to the extent that personal financial advice is provided under an Australian Financial Services licence held within the trustee.

We note the Minister's recent determination to impose a special levy on 'retail facing' sub-sectors to address the CSLR funding shortfall for 2025-26, which will see some \$6.1 million levied on trustees of registrable superannuation entities (RSEs). Effectively, this is a levy imposed on the retirement savings of Australians, held in trust by funds which are themselves ineligible to access the CSLR, as the levy will flow through to fund members by way of increased fees and/or reduced earnings.

Options for future funding arrangements are also being explored by the Government, including RSE trustees potentially paying substantial contributions to the levy shortfall in future financial years. If this were to occur, it would involve an ongoing impost on Australians' retirement savings.

Ahead of the consultations on broader CSLR reforms, ASFA wishes to highlight several critical elements that we consider should be incorporated into a redesigned CSLR to ensure it is sustainable and better able to fulfil its intended role as a genuine scheme of *last resort*:

1. Compensation should be limited to *actual* losses, rather than applying the current 'but for' test that evaluates hypothetical capital gains in addition to actual losses suffered by consumers.
2. Administration and operational costs should be reduced, with a detailed review of the current operating model and consideration of options to increase the Scheme's efficiency
3. The Government should contribute to funding the current shortfall and pursue wrong-doers – it would be appropriate for the Government to make a financial contribution to the 2025-26 special levy to assist in addressing the compensation shortfall, as well as contribution in the years ahead in case a shortfall arises. This should include the attribution of ASIC enforcement penalties (on impacted sectors) to fund the levy and an expectation that ASIC will prioritise compensation orders over civil penalties in instances of consumer loss. We would also encourage the resourcing of a discrete agency to focus on loss recovery via the exhaustion of all possible avenues prior to scheme utilisation.
4. There should be more complete pursuit of those responsible for misconduct. The current consultation on enhancing professional indemnity insurance (PII) is welcome in this context, given issues regarding pursuit of claims for entities in administration/liquidation. The review should also consider how the regulatory framework can better prevent those responsible from undertaking and perpetuating misconduct. This could include consideration of stronger monitoring and preventions for phoenixing, strengthening penalties against individual perpetrators, and providing the CSLR with greater powers of subrogation to better enable recovery for entities in liquidation. These measures would all assist toward ensuring the Scheme genuinely operates as a *last resort*.
5. The review should be undertaken swiftly and ideally be finalised by 30 June 2026, with reforms to be implemented immediately thereafter and prior to the calculation of any special levy for the 2026-27 financial year.

Enhancing professional indemnity insurance

While acknowledging it is not the role of PII to *directly* protect consumers, ASFA agrees it is vital that PII operates as a robust ‘first line of defence’ to protect consumers from uncompensated losses in cases of poor advice, misconduct or a firm’s collapse. We welcome consideration of all measures that may reduce the flow of claims to the CSLR, thereby improving its sustainability and reinforcing its role as scheme of last resort. It is important that the CSLR operates as a genuine residual safety net, and is not viewed as a general backstop to address broader deficiencies within the financial services regulatory environment.

However, ASFA recognises that while increasing the potential scope and/or volume of claims covered by PII would reduce claims on the CSLR and therefore the CSLR funding levy, it will likely result in higher PII premiums – thereby effecting a redistribution of industry cost. A potential re-pricing of PII may have a detrimental effect across the superannuation and advice sectors, and we recommend careful modelling of the impacts of any proposed reforms. We anticipate that submissions to this consultation from providers of PII cover will provide constructive input with regard to the pricing of PII under various reform options.

The consultation paper raises questions regarding the effectiveness of the existing regulatory model for PII in the Australian financial services context. Noting the UK precedent (described on page 6 of the consultation paper), ASFA considers it would be appropriate for greater prescription, within the Australian regulatory settings for PII, in relation to policy terms and exclusions, as well as minimum limits for indemnity.

The consultation paper acknowledges that some industry stakeholders support ASIC taking a more active role in ongoing oversight of licensees’ PII, but this would require the collection of more granular data on an ongoing basis. ASFA agrees that increased collection of data on PII from insured licensees on an ongoing basis may support the ability of Government and regulators to assess emerging risks within the financial services. However, we consider the utility of the information may be reduced given the time lag inherent in periodic reporting. Further, it should be recognised that additional data reporting would involve increased compliance costs for industry, in the form of direct cost and resource requirements to uplift data reporting and comply with the enhanced reporting requirements ongoing, as well as the costs incurred by ASIC which would be passed back through increased supervisory levies (via the ASIC industry funding model). Accordingly, increased data collection should only be imposed if there is confidence it will lead to a demonstrable improvement in oversight.

ASFA supports investigation of improved subrogation powers for the CSLR, to better enable recover where entities are in liquidation. We note the concern expressed in the consultation paper that seeking to mirror changes adopted in the UK may not materially improve either the effectiveness of PII in Australia, or the ability of the CSLR operator to recover compensation amounts from PII policies. Notwithstanding this, ASFA supports investigation of all viable options to enable the CSLR to more effectively recover from a licensee under external administration, or their PII insurer.

We are supportive of the Government's commitment to address deficiencies with the CSLR and look forward to a continued constructive engagement on these matters

If you have any queries or comments in relation to our submission, please contact Julia Stannard, Policy Director, on (02) 8079 0819 or by email JStannard@superannuation.asn.au.

Yours sincerely

James Koval

Chief Policy & Advocacy Officer