



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

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Mr Heath Hudson

Director, CSLR Team

Treasury

Lodged via online portal

22 May 2026

Dear Mr Hudson

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

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission in response to Treasury's consultation paper on the Compensation Scheme of Last Resort (CSLR): *Reform options to support ongoing sustainability*.

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.

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

Executive summary and general comments

ASFA welcomes this important and timely consultation into the sustainability of the CSLR. Our submission builds on our consistent advocacy, over more than a decade, in relation to the Scheme and the potential impact of its funding arrangements on the APRA-regulated superannuation sub-sector and the retirement savings of millions of Australians.

We agree 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 long been supportive of an appropriately scoped CSLR – one that is targeted to those areas where there is significant evidence of uncompensated losses. Cases of non-payment of determinations and other failures to compensate have not been experienced uniformly across the financial services industry but historically have been (primarily) confined to particular sub-sectors.

It is also important to ensure the CSLR does not impose an inequitable burden on those financial firms that have not contributed and will not contribute to the issue of unpaid compensation – or, indirectly, on their customers/members.

ASFA does not support a CSLR model where sub-sectors unconnected with the compensation liability are routinely called upon to fund it. In particular, ASFA strongly opposes entrenching a CSLR funding model that requires ongoing contribution from APRA-regulated superannuation funds, that will be funded from Australians' retirement savings, when the members of those funds effectively receive no benefit from the Scheme.

We anticipate that the implementation of broader consumer protection reforms proposed by the Government should – in time – reduce the flow of claims through to the CSLR and therefore its funding needs. Some of the specific proposals in this consultation paper, if adopted, will also serve to reduce compensation outlays and therefore contribute toward improving the Scheme's sustainability.

However, notwithstanding these improvements, it is likely that the total compensation liabilities under the CSLR will still too regularly exceed the levy caps applicable to the sub-sector(s) in which those liabilities arose – those described in the consultation paper as the 'primary sub-sector(s)'.

As a result, we consider there is a need to consider a more substantial re-design of the CSLR, with a specific focus on delivering a Scheme that can operate sustainably with its funding needs consistently met via contribution from those primary sub-sectors, without reliance on other sub-sectors unconnected to the liability.

In the event the Government determines to proceed with the proposed 'waterfall framework' for funding of the CSLR, we consider this must apply as a short-term option only and any special levies imposed beyond the primary sub-sector(s) must be spread to the maximum extent possible, to minimise the impact of cross-subsidisation on the customers of unconnected sub-sectors.

Proposal 5: Embedding greater certainty in the special levy framework

ASFA's long-standing position is to support a sustainable and appropriately scoped CSLR which targets areas with significant evidence of uncompensated losses and avoids cross-subsidisation between sub-sectors.

As outlined in our advocacy spanning more than a decade on this issue, when discussing superannuation in the context of the CSLR, it is important to note:

- there is no data suggesting undischarged compensation is an issue within the APRA-regulated superannuation sub-sector.
- the APRA-regulated superannuation sub-sector is subject to an extensive and robust framework of legislative and prudential regulation as well as ongoing supervision, minimising the likelihood of fund failure.
- in the event an APRA-regulated fund is unable to pay benefits due to fraud or theft, that legislative framework already includes arrangements to replenish assets through financial assistance arrangements – a sector-funded compensation scheme – in Part 23 of the *Superannuation Industry (Supervision) Act 1993* (SIS Act).

For these reasons, APRA-regulated funds are currently – and appropriately – only 'in scope' for the CSLR where and to the extent that covered services are provided under an Australian Financial Services Licence (AFSL)¹ held by the fund trustee. In practice, this is limited to the provision of personal financial advice, and those APRA-regulated funds with 'in-house' advisers already contribute toward the CSLR's funding on that basis.

Given the stringent prudential regulatory supervision of APRA-regulated funds, there is little prospect that an AFCA determination against a fund trustee relating to services provided under an AFSL would go undischarged and for a claim to flow to the CSLR. In effect, therefore, the members of APRA-regulated superannuation funds derive no benefit from the CSLR.

Notwithstanding this, APRA-regulated superannuation funds have already been called upon to contribute some \$6.1 million of the CSLR's funding shortfall for 2025-26². Applying the current special levy methodology to the 2026-27 period would see a special levy in the order of \$13.8 million³ imposed on the APRA-regulated superannuation sub-sector – with the prospect of further special levies in coming years, under both the existing funding model and the 'waterfall framework' proposed in the consultation paper. These are costs that impact on the retirement savings of millions of Australians.

During the long development process for the CSLR, there was considerable discussion of the Scheme's estimated funding needs and the risk that large scale financial provider failures would push funding liability onto sub-sectors wholly unconnected with the compensation liability.

¹ This would also be the case in relation to services provided under an Australian Credit Licence however these are not commonly held directly by an APRA-regulated superannuation fund trustee.

² *Corporations (Financial Services Compensation Scheme of Last Resort—Special Levy) Determination 2025*

³ *Compensation Scheme of Last Resort (CSLR): Reform options to support ongoing sustainability - Options paper, April 2026*, see page 32

The ability to impose a special levy on unconnected subsectors, as included in the current legislation, was framed in terms of addressing “higher than expected costs for the levy period, such as where a large financial services provider becomes insolvent, or where a “black swan” event occurs in the financial services industry”⁴. Effectively, the imposition of a special levy of unconnected sub-sectors was intended only as backstop funding, not to form part of the Scheme’s regular funding.

However, only two years into the operation of the CSLR⁵, several large scale financial provider insolvencies have already led to compensation liabilities far in excess of the sub-sector levy cap with that situation expected to deteriorate further as compensation claims relating to the collapse of Shield Master Fund and First Guardian Master Fund flow through to the Scheme. We have moved beyond discussion of “higher than expected costs” and “black swan events” – it is clear that without substantial reform there will continue to be a need for special levies and that the current model is unsustainable going forward.

Under the proposed ‘waterfall framework’, the APRA-regulated superannuation sub-sector (as a ‘retail facing sub-sector’) would be part of the ‘final backstop payers’ with a proposed special levy liability of up to \$30 million per levy period. This raises the prospect of potential liability for the sector of more than double the already substantial estimate for 2026-27. ASFA does not support further entrenching a funding model for the CSLR that relies upon the payment of special levies by APRA-regulated superannuation funds.

We appreciate that the waterfall framework seeks to provide some certainty around the potential special levy liability of sub-sectors, noting there is currently no sub-sector cap for special levies (subject to the proviso that the overall \$250 million Scheme cap cannot be exceeded). However, we consider the framework entrenches a position that should not, as a matter of principle, be accepted – that substantial liability will continue to be borne by sub-sectors unconnected to the compensation liability.

We note the Government’s commitment to implementing broader consumer protection reforms⁶. It is vital that decisive action is taken to target behaviour identified as contributing to the loss of consumer’s savings – particularly where that behaviour targets consumers’ superannuation, much of which represents mandated rather than discretionary saving. Preventing and prosecuting misconduct will do much to rebuild lost confidence in the financial services industry and will also – in time – reduce the flow of claims through to the CSLR and therefore its funding needs.

We acknowledge also that some of the specific proposals in this consultation paper, if adopted, will serve to reduce compensation outlays and therefore contribute toward improving the Scheme’s sustainability – particularly the proposed revisions to the treatment of counterfactual loss.

However, notwithstanding these improvements, the likelihood remains that the total compensation liabilities under the CSLR will still too regularly exceed the levy caps applicable to the primary sub-sector(s).

⁴ Explanatory Memorandum to Treasury Laws Amendment (Financial Services Compensation Scheme of Last Resort) Bill 2023, paragraph 2.71

⁵ The CSLR commenced to accept claims on 2 April 2024

⁶ Including through simultaneous consultations on [enhancing member protections in the superannuation system](#) and [curbing lead generation activity](#)

As a result, we are of the view that a more substantial re-design of the CSLR should remain under active consideration, with a view to delivering a re-focused Scheme that operates sustainably. One key objective for such a review should be ensuring the Scheme's funding needs can be consistently met via contribution from those sub-sectors connected to the compensation liability and reliance on backstop funding from other sub-sectors is avoided. Such a review should consider the nature of possible claimants as well as which entities and sub-sectors should contribute to the standard CSLR levy. This process should be commenced before the end of this financial year and completed as soon as possible.

ASFA strongly opposes entrenching a CSLR funding model that requires ongoing contribution from APRA-regulated superannuation funds, that will be funded from Australians' retirement savings, when the members of those funds effectively derive no benefit from the Scheme.

In the event the Government determines to proceed with the proposed 'waterfall framework' for funding of the CSLR, we would make the following comments:

- Extension of the waterfall framework to the APRA-regulated superannuation sub-sector must apply as a short-term option only while a more comprehensive reconsideration of the Scheme is undertaken (as noted above).
- The waterfall must be explicitly framed to ensure the special levy cap for each 'tier' is fully exhausted before recourse can be had to the next tier of sub-sectors.
- Where the special levy cap for the primary sub-sector(s) is fully exhausted, any remaining special levy amount must be spread to the maximum extent possible to minimise cross-subsidisation and the burden on individual financial firms. In this respect, please refer to our comments in relation to proposals 6 (treatment of self-managed superannuation funds) and 7 (treatment of managed investment schemes).

Recommendation

The proposed 'waterfall framework' for funding of the CSLR:

- ASFA does **not** support a CSLR model where sub-sectors unconnected with the compensation liability are routinely called upon to fund it.
- In particular, ASFA strongly opposes entrenching a CSLR funding model that requires ongoing contribution from APRA-regulated superannuation funds, that will be funded from Australians' retirement savings, when the members of those funds effectively cannot claim from the Scheme.
- A greater focus is required on ensuring the CSLR's funding needs are consistently met via contribution from the primary sub-sector(s) without reliance on other sub-sectors.
- In the event the Government proceeds with the proposed 'waterfall framework' for funding of the CSLR, this must apply as a short-term option only and any special levies imposed beyond the primary sub-sector(s) must be spread to the maximum extent possible, to minimise the impact of cross-subsidisation and the impact on individual financial firms.

Proposal 6: Considering responses to the role of self managed superannuation fund (SMSF) losses in pressure on the CSLR

ASFA supports and respects the rights of consumers to make an informed choice whether to hold their superannuation savings within the APRA-regulated sector, or through an SMSF.

The need for an informed choice is critical given consumers, in establishing an SMSF, are no longer merely ‘fund members’ but also take on a range of important responsibilities as trustees. That decision also means accepting that some differing levels of protections apply – as noted in the consultation paper, SMSFs are not eligible under financial assistance arrangements under Part 23 of the SIS Act that are available to APRA-regulated funds (but, appropriately, are not called upon to fund that financial assistance).

As noted earlier in this submission, members of APRA-regulated funds are effectively ineligible to claim from – and therefore derive no benefit from – the CSLR. Our strong view is that the APRA-regulated superannuation sub-sector should also be excluded from any obligation to fund the CSLR via special levy.

Consistent with this, ASFA is of the view SMSFs should be excluded from eligibility to claim under the CSLR, and also excluded from any requirement to contribute to its funding via a special levy.

We do not, however, recommend this in isolation.

We note that implementation of the broader consumer protection reforms proposed by the Government will likely go some way to reducing, going forward, the losses incurred by SMSFs. In addition, however, ASFA recommends examining what more can be done to support informed decision making by consumers in relation to SMSFs – that is, ensuring member-trustees are fully aware of the obligations and risks they are assuming in relation to their superannuation savings.

At a minimum, this might involve strengthening aspects of the advice process when a financial adviser recommends establishment of an SMSF and – of particular importance for consumers who choose not to utilise a financial adviser – expanding the scope of the ATO’s current ‘trustee declaration’⁷ to include not only an acknowledgment of relevant regulatory obligations but also consequences flowing from their decision to invest via an SMSF. This should specifically include acknowledgement that in establishing or joining an SMSF, the individual is aware they will not have access to the CSLR.

However, in the event the Government determines to proceed with a funding model for the CSLR with the APRA-regulated superannuation sub-sector in scope for special levy purposes, we consider that SMSFs should similarly be brought within scope.

As outlined in our response to Proposal 5, it would be inappropriate for any backstop funding from superannuation to apply beyond the short term and – if this approach is adopted – it would be important to ensure that any special levies are spread to the maximum extent possible to minimise both cross-subsidisation and the burden on individual financial firms. A further consideration is the need to ensure the costs associated with raising and collecting the special levy are minimised, and this mitigates against introducing complex processes or selective mechanisms that are costly to administer and likely to collect only minimal levies. In our view, the most equitable and practicable approach – if any superannuation funds are to be included in backstop funding – is to levy all SMSFs, without either an opt-in or opt-out mechanism.

In the event that SMSFs are subject to a special levy as part of backstop funding, their eligibility to claim under the Scheme (in relevant cases) should be retained.

⁷ The [trustee declaration](#) form is completed where an individual becomes a trustee (or the director of a corporate trustee) of a new SMSF or an existing SMSF:

Recommendation

Treatment of SMSFs:

- SMSFs should be excluded from eligibility under the CSLR, with a corresponding exclusion from ‘backstop’ funding under the waterfall framework.
- Further measures should be considered to support informed choice by consumers utilising SMSFs for their superannuation savings.
- In the event the Government proceeds with a funding model for the CSLR that includes the APRA-regulated superannuation sub-sector as part of ‘backstop’ funding, this should also extend to SMSFs. In that case, it would be appropriate for SMSFs to retain their current level of eligibility to claim under the Scheme.

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

We welcome consideration of how to equitably reflect the treatment of MISs within the CSLR and particularly within the levy framework.

As indicated in our response to Proposal 5, ASFA does not support a CSLR model where sub-sectors unconnected with the compensation liability are routinely called upon to fund it.

Further, we consider it important to ensure that the costs associated with administering the Scheme are minimised and – to the extent any ‘backstop’ (Tier 3) funding is to be required under the proposed waterfall model, these must be short term in nature and spread broadly.

As acknowledged in the consultation paper, the MIS sub-sector is highly diverse. There is a broad spectrum of associated risk and some types of MISs are less likely to lead to claims on the CSLR. We note also that the Government has proposed a range of reforms to enhance the governance and oversight of MISs which, if implemented, should mitigate the risks of losses arising in this sub-sector. Further, the Government’s 2026-27 Budget includes additional funding for ASIC to “strengthen governance requirements, supervision and enforcement” in relation to MISs. The funded initiatives specifically include enhancing ASIC’s “ability to utilise data in its supervision of the managed investment scheme sector” and consulting on new data collection powers⁸.

Taking these proposed reforms and initiatives into account, we consider there would be merit in Treasury and ASIC investigating the viability of a risk-informed levy approach for MISs. That is, consideration should be given to whether a ‘lower risk’ cohort can be accurately identified from data already collected, or proposed to be collected, by ASIC, without imposing additional cost that must be recouped from the CSLR itself. To the extent that can be achieved, it may then be appropriate to exclude this cohort from Tier 2 – but not Tier 3 – of the proposed waterfall model.

⁸ Budget 2026-27, Budget Paper No 2, page 143

Recommendation

If a 'low risk' cohort of MISs can be accurately identified from data ASIC already collects or is proposing to collect, without imposing additional cost that must be recouped from the CSLR, it may be appropriate to exclude this cohort from Tier 2 – but not Tier 3 – of the proposed waterfall model.

Proposal 1: Enabling the CSLR to deduct payments from compensation

ASFA supports the implementation of proposal 1. Given its nature as a *last resort* scheme, it is appropriate that other payments and/or offsets are deducted from compensation payments made by the CSLR. This reform will support the integrity and purpose of the Scheme.

We note the timing issues outlined in the consultation paper, as relevant offsets may not always be known when the Scheme is otherwise ready to make an offer and payment of compensation. We are confident this can be addressed through an appropriately framed clawback mechanism. While the design details should be considered separately, this could, in ASFA's view, include consideration of a de minimus rule and ensure that recovery is only pursued where cost effective.

Recommendation

The CSLR Operator should be empowered to reduce compensation payments by considering all relevant amounts that a claimant may receive in connection with the matters covered by an AFCA determination.

Proposal 2: Expanding CSLR subrogation rights

ASFA supports reforms to expand the CSLR Operator's subrogation rights. The proposed reforms would strengthen the CSLR's legal entitlement to pursue recovery action and therefore support the sustainability of the Scheme.

While framed in terms of alternatives, we consider it might in fact be possible to implement *both* options, as Option 1 relates to the potential subrogation amount, while Option 2 relates to subrogation recovery sources.

The consultation paper notes the limited recoveries made under the current subrogation framework and cautions that reforms may not produce a material revenue uplift, given the limited asset base of many insolvent firms and the cost of pursuing claims. In ASFA's view, that does not mean reform should not be pursued. Consideration of the relevant design details could include ensuring the CSLR Operator is not required to pursue recovery in all cases, but rather has the discretion to do so where appropriate following an assessment of cost effectiveness.

Recommendation

The CSLR Operator's subrogation rights should be expanded to support the sustainability of the Scheme.

Proposal 3: Technical improvements

ASFA supports the proposed technical improvements for the Scheme.

Of the technical improvements outlined as part of Proposal 3, we recommend that the Government prioritises the reforms to align the disallowance period for the CSLR levy instrument with the period applicable to the ASIC industry funding levy instruments. This will allow faster confirmation of levy amounts, reducing potential uncertainty for industry participants and ensuring the processing of compensation payments by the CSLR Operator is not unnecessarily delayed.

Recommendation

The proposed 'technical improvements' should be implemented.

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

Recognising the underlying purpose of the Scheme is to provide compensation as a last resort, as well as the need to prioritise its ongoing sustainability, ASFA strongly supports Option 1. Compensation available under the Scheme, up to the cap, should be linked to the capital loss incurred by the applicant.

We acknowledge that the 'but for' test is an important and long-standing principle in damages law, and that it continues to play a central role in determining loss in many contexts. However, given the unique function of the CSLR as a last-resort compensation mechanism, ASFA considers that a more tailored approach is appropriate.

In particular, we consider the CSLR framework should more closely reflect principles applied in bankruptcy law, which are designed to practically limit recovery to the actual value of claims, rather than to replicate a strict 'but for' counterfactual outcome. This approach better balances fairness to claimants with the need to ensure the sustainability of the Scheme, especially given it is funded through a levy on entities that were not involved in the conduct that caused the loss.

In the event the Government decides to proceed with Option 2 and prescribe a counterfactual benchmark, ASFA is of the view that any adjustment to capital loss should be limited to movements in the Consumer Price Index (CPI) over the relevant period. This would maintain compensation in real terms while avoiding the complexity and variability associated with broader counterfactual assessments.

Treasury may wish to consider circumstances where market investment returns relevant to a moderate or balanced investment class would be lower than CPI over the relevant period. This consideration would add some complexity but minimise the risk that the Scheme would provide compensation in excess of reasonable returns received by consumers generally.

We also note that, in the absence of any further reform, this proposal will apply only to claimants under the CSLR. AFCA would continue to apply its existing counterfactual approach, meaning the overwhelming majority of successful complainants will continue to receive compensation directly from their financial services provider – including, where appropriate, any counterfactual adjustment – without recourse to the CSLR.

Recommendation

Compensation under the CSLR should be limited to the capital loss suffered (up to the compensation cap).

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

We are unable to comment on the extent to which the corporate and insolvency frameworks are currently misused in the manner outlined. The proposed related-entity liability mechanism will, in ASFA's view, strengthen the integrity of the Scheme and help to minimise any transfer of liability to the sub-sector and (through special levies) the financial services industry more broadly.

Recommendation

The proposed related-entity liability mechanism should be implemented if there is evidence of misuse of corporate and insolvency frameworks to evade compensation liability.