



29th August 2025

Director, Programs and Redress Unit
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600

Email: CSLR@treasury.gov.au

Dear Sir/Madam

SMSF ASSOCIATION SUBMISSION: COMPENSATION SCHEME OF LAST RESORT: EXCEEDING SUB-SECTOR LEVY CAPS

The SMSF Association welcomes the opportunity to provide this submission to the Treasury consultation on the *Compensation Scheme of Last Resort: exceeding sub-sector levy caps*.

The SMSF Association supports the objective of the compensation scheme of last resort (CSLR). Consumers should have access to financial compensation where they suffer a financial loss from poor or negligent financial advice. They should have trust and confidence that awarded compensation claims will be paid, and in a timely manner.

It is therefore necessary to consider the options available to fund efficiently and effectively the estimated \$47,288,986 that will exceed the \$20 million sub-sector cap for unpaid AFCA determinations for the 2025/26 financial year.

Importantly, while this shortfall is attributed to the financial advice subsector, it is not those AFS licensees that are AFCA members, or in fact any current AFCA members, who are responsible for this significant and concerning shortfall in potential unpaid compensation claims.

This is because there is no element of the current CSLR's industry funding model that is predicated on direct industry culpability for particular instances or classes of misconduct.

Given this, we believe the most efficient and equitable option to fund the special levy is to spread it broadly across all subsectors, based on the capacity to pay of the AFCA members within each subsector.



This option would be the most effective means of paying timely compensation to eligible claimants.

While on face value it may seem unequitable for a subsector to fund unpaid claims for another subsector, the reality is that the current CSLR model is not equitable – each subsector is mandated to fund compensation for the misconduct and deliberate negligence of their peers, to which they have no control nor influence over.

Importantly, we believe that the Government should also share this responsibility. The Government is the only stakeholder that has the power to enact and affect the regulatory settings that participants must operate within. Given this, we believe the Government should also be responsible for funding part of the special levy.

While the need for a special levy was considered in the design of the CLSR as a key funding mechanism for a 'black swan' event following a large failure, it is not designed to fund the flock of black swans that we have experienced and appear to continue to experience in recent times.

Therefore, rather than considering if an option to fund a special levy is repeatable, the immediate focus should be on addressing the issues that are giving rise to these consistent large scale failures that are resulting in significant consumer financial detriment.

These events also continue to undermine the trust and confidence in the financial services sector.

Dr June Smith, AFCA deputy ombudsman recently stated:

"We are well beyond black swan events and bad apples, and we need to look at these systemic issues across the industry and prevent them from happening in the first place. It's not enough to have a Compensation scheme of Last Resort at the end when harm has occurred".¹

We could not agree more.

It is not equitable nor sustainable to expect AFCA members to continually fund such significant financial shortfalls.

The SMSF Association recommends an immediate review to identify and address the systematic failures that are permitting these large scale failures to be perpetrated.

We also call on the Government to expedite its response to the review into the current CSLR funding model to ensure its sustainable for both participants and consumers.

Our detailed responses to the consultation paper are attached.

¹ <https://www.theaustralian.com.au/business/asic-warned-by-financial-advice-association-australia-about-shield-first-guardian-tactics-in-2021/news-story/3a92a9c975aaf843a0e7a3df00abe657>



If you have any questions about our submission, please do not hesitate to contact Keddie Waller, Policy Manager, via email keddiewaller@smsfassociation.com

Yours sincerely,

Peter Burgess
Chief Executive Officer

ABOUT THE SMSF ASSOCIATION

The SMSF Association is the peak body representing the self-managed superannuation fund (SMSF) sector which is comprised of over 1.1 million SMSF members and a diverse range of financial professionals. The SMSF Association continues to build integrity through professional and education standards for practitioners who service the SMSF sector. The SMSF Association consists of professional members, principally accountants, auditors, lawyers, financial advisers, tax professionals and actuaries. Additionally, the SMSF Association represents SMSF trustee members and provides them with access to independent education materials to assist them in the running of their SMSF.



Compensation Scheme of Last Resort: exceeding sub-sector levy caps

High-level options under section 1069H

1. What principles should the Minister have in mind when considering high-level options for dealing with an excess estimate?

It is challenging to determine what principles the Minister should be mindful of when considering possible options to deal with the excess estimate, as there is no mechanism in the CSLR model that holds those responsible for the excess estimate, nor unpaid AFCA determinations, to account.

In fact, as noted in the consultation paper in paragraph 24, no element of the CSLR's industry funding model is predicated on direct industry culpability for particular instances or classes of misconduct.

This means at an individual member level principles such as responsibility, equity and fairness cannot be considered. Rather, consideration of applicable relevant principles must be in the context of the potential impact on the subsectors that may be burdened with bearing the cost of the excess cap estimate (and the CSLR scheme).

Given this, we believe that the principles that the Minister should have in mind when considering the high-level options for dealing with an excess estimate include:

- financial viability
- financial sustainability, and
- capacity to pay, notwithstanding this is difficult in practice to measure.

The principles should also be considered from the perspective of those consumers who have an unpaid AFCA determination, such as the certainty and timeliness of receiving the payment, noting that significant delays could also lead to further financial detriment for some.

2. Are there any matters the Minister should not have regard to (including any outlined in the text above) when considering these options?

We do not believe the administrability of the levy should be a matter for consideration given that the consultation paper notes it would only cost ASIC marginally more to administer the levy if more sub-sectors are included.

3. Is 'repeatability' an important consideration?

We strongly believe that repeatability is not an important consideration for determining the high-level options for dealing with an excess estimate. This is because the model that the CSLR is founded on is fundamentally flawed and unsustainable for the personal financial advice subsector.

Holding a sector accountable for the failures of firms who intentionally prioritise profit to the detriment of their clients, is not only unsustainable, but unjust. It also demonstrates that the current design is resulting in moral hazard contributing to the increasing scale of potential CSLR liabilities being burdened on those Australian Financial Services (AFS) licensees who comply with their statutory obligations and provide quality and valued financial planning advice to their clients.



The current CSLR model must be amended to ensure both it and the retail financial planning sector are viable and sustainable into the future.

4. Which one or more of the high-level options would be most appropriate for dealing with the excess in the 2025-26 financial year?

The SMSF Association does not support a special levy for just the primary subsector, being the financial advice subsector.

Whilst applying the special levy to just the primary sub-sector need not, nor should it, imply any collective responsibility for the relevant misconduct, it unfairly burdens compliant AFS licensees to fund an estimated shortfall of nearly \$50 million.

The majority of these AFS licensees are small businesses that cannot sustain paying for the often deliberate or negligent, failures of others, including those that were subsidiaries of ASX listed corporations.

It must also be acknowledged that this cost will be ultimately passed on to clients, further impacting the provision of affordable and accessible quality financial advice. This outcome appears to be at odds with the Government's own commitment to ensure Australians can access quality and affordable financial advice.

We also do not believe that taking no action is a fair or just outcome for those consumers who have an unpaid AFCA determination. Whilst there is no deadline for the CSLR to make a payment, there is a real risk that waiting for the CSLR to be fully funded to pay all unpaid AFCA claims under the current model may never eventuate. This may leave those impacted consumers in a financially vulnerable position indefinitely.

Taking no action coupled with the current design of the CSLR model also creates an unpredictable contingent liability for AFS licensees. It will arguably also continue to negatively impact the accessibility of quality and affordable financial advice

We believe that spreading the compensation over time will result in a similar outcome, noting we have now had not one, but multiple black swan events since the commencement of the CSLR in April 2024.

Given this, we recommend that the special levy is spread broadly across all subsectors. This option would be the most effective means of paying timely compensation to eligible claimants. While on face value it may seem unequitable for a subsector to fund unpaid claims for another subsector, the reality is that the current CSLR model is not equitable – each subsector is mandated to fund compensation for the misconduct and deliberate negligence of their peers, to which they have no control nor influence over.



5. Who bears the burdens – financial and non-financial – of your preferred option, and what is their capacity to bear it? Would your preferred option impact the viability of a sub-sector?

The cost of funding the estimated excess should be broadly spread across all subsectors based on the capacity of that subsector to pay.

We believe this option would result in unpaid AFCA determinations being paid in a timely manner and ensure the viability of all subsectors of the CSLR.

6. Is your preferred option repeatable if necessary in the future?

Further to our response to question 3, the consideration of whether an option is repeatable should not be a current consideration. The immediate focus must be on the redesign of the CSLR to ensure it is sustainable and fit for purpose.

This includes addressing the fact that the responsibility for funding unpaid consumer losses should be shared evenly across all stakeholders in the financial services sector. The current CSLR does not reflect this shared responsibility as it excludes product manufacturers, including managed investment schemes (MISs). We believe this is a significant flaw in the scheme, given that manufacturers whose products are poorly designed and improperly fail do not contribute to the funding of the CSLR, yet they continue to cause significant consumer financial detriment.

We also believe that there must be an immediate review of the systematic issues across the sector to prevent these events from occurring in the first place. It is not enough to have a CSLR at the end when the harm has already occurred. This fails to identify and address potential future consumer harm.

7. If your preferred option is a combination of a special levy with a determination to spread compensation over time (or taking no action), how much of the excess should be left unrecovered by the special levy? Why?

Further to our response to question 4, we do not support a combination of spreading the compensation over time (or taking no action) and imposing part of the special levy. We do not believe this approach would be fair to those consumers who currently have unpaid determinations.

There is also no ability to predict the quantum of unpaid AFCA determinations in the coming CSLR levy periods, and based on recent experience, there is a significant risk another black swan event will occur in the short-term. Therefore, taking no action or spreading compensation over time is only likely to delay a resolution to the issue of funding the unpaid AFCA determinations.

Options for a special levy not just on the primary sub-sector

8. Should a Minister consider imposing a special levy on a sub-sector because of its connection to the losses that have driven an excess? If so, what are the factors that should be taken into account in the Minister's consideration?

We do not support the Minister imposing a special levy on a subsector because of its connection to the losses that have driven an excess.



No element of the CSLR's industry funding model is predicated on direct industry culpability for particular instances or classes of misconduct.

Further, no subsector can control nor influence the conduct of its peers. The only recourse available is to report conduct of concern to the regulator and trust that timely action will be taken where appropriate to prevent or limit the potential consumer harm.

Allocating a special levy on this basis unfairly burdens those connected subsectors.

However, we agree with observations made by other stakeholders noted in the consultation paper that 'financial product failures in particular in relation to managed investment schemes, are a driver of the CSLR's costs'. Given this, we believe it is a significant flaw of the CSLR that manufacturers whose products are poorly designed and improperly fail do not contribute to the CSLR.

[9. What evidence should a Minister require, or what process should be undertaken, before determining that there exists a subjective responsibility that should be reflected in a special levy?](#)

We do not support a process to explore how subjective responsibility should be reflected in a special levy.

Ensuring the Australian community has confidence and trust in our financial services sector is a shared responsibility and as such, the special levy should be allocated in this manner.

AFCA stated in its submission to the *Scam Prevention Framework Bill 2024*, that it considers it essential that the liability regime applies consistently across all sectors² and that a 'shared responsibility framework' means that each participant has a role to play to support timely and comprehensive resolution of complaints³.

The SMSF Association believes the same approach should be applied to the CSLR, in that it should be a shared responsibility across all participants in the financial services sector, not just AFS licensees providing personal financial advice.

The exclusion of MISs from the CSLR regime for example continues to create a significant consumer protection gap in the regulatory settings. This must be addressed to protect those who choose to invest in such products without seeking professional financial advice – either by choice or because they may not realise, they are directly investing in a financial product.

Importantly, both the Government and the regulator are also key participants in the CSLR and share this responsibility. For example, only the Government has the power to establish the regulatory settings for participants to operate, and ASIC the power to enforce compliance.

Given this, we believe that the Government should also be responsible for funding part of the special levy.

² [AFCA's submission to the Senate Economics Legislation Committee into the Scams Prevention Framework Bill](#) p. 8.

³ Ibid p.8



10. Should a Minister consider imposing a special levy on a sub-sector because of its capacity to pay? Is this approach supported by the legislation (is it 'most effective')? How would the Minister assess a sub-sector's capacity to pay?

We believe the cost of funding the estimated excess should be broadly spread across all subsectors, not just the largest, based on the capacity of that subsector to pay.

This option would be the most effective means of paying timely compensation to eligible claimants and reflect the fact that the current CSLR model is not equitable – each subsector is mandated to fund the misconduct and deliberate negligence of its peers, to which they have no control nor influence over.

11. Is any of the ASIC IFM sub-sectors a good proxy for financial sector entities with the greatest capacity to pay?

See response below to question 12.

12. Should the Minister consider specifying more than one sub-sector with 'large' entities? If so, how should the special levy amount be apportioned between them?

We do not support this approach and as such, do not support the ASIC IFM subsectors being used as a proxy to identify financial sector entities with the greatest capacity to pay, nor this approach being applied to more than one subsector.

13. Should a Minister consider imposing a special levy on all retail-facing sub-sectors? Is this approach supported by the legislation (is it 'most effective')?

We support a special levy being applied broadly to all CSLR subsectors to fund the cost of the estimated excess, based on the capacity of that subsector to pay. This is the most financially sustainable approach to apply the special levy.

We do not support the special levy being apportioned based on the regulatory effort applied to each sub-sector as reflected in ASIC's most recent IFM determination. While this approach may align with the basis of the CSLR annual levy process, a review of the current funding model was initiated by the Government earlier this year because of concerns around sustainability under this model for both participants and consumers.

Of further concern is that significant ASIC regulatory costs are borne by the personal advice to retail clients sector annually. Yet despite 22% of ASIC's recent regulatory costs being allocated to personal advice sector, all black swan events that have occurred to date have been in the personal advice sector resulting in need to consider this special levy.

We also reiterate our earlier comments that ensuring that the Australian community has confidence and trust in our financial services sector is a shared responsibility and as such, the special levy should be allocated in this manner. Given the Government is a key participants in the CSLR and the only stakeholder with the power to establish the regulatory settings for participants to operate, the Government should also be responsible for funding part of the special levy.



14. If so, what is the best method for apportioning the special levy among retail-facing sub-sectors? To what extent is capacity to pay relevant, and what is the best means of assessing this? What data are available to inform this assessment?

The capacity for a subsector is important to ensure the sustainability and viability of that subsector well into the future. It is also important to ensure that it does not deter future entrants from entering retail facing sectors for fear of excessive and unpredictable levies that may be imposed on them in the future.

However, we do not believe that revenue is the most appropriate method to assess capacity to pay, as this does not reflect the costs participants in that subsector may face in operating within their environment.

15. Are the data and methodologies used by Treasury in calculating illustrative estimates of these options reliable and appropriate? What alternative approaches exist?

While the consultation paper explores alternative methodologies, we note that they are still broad estimates and there are therefore limitations relying on these illustrative examples.

However, capacity to pay may be best represented by profit, notwithstanding that this must also be applied at an entity level to ensure it reflects the true capacity for CSLR participant to pay.

16. Are there options outside the current legislative framework that may be a more effective way of dealing with excess cost estimates in future?

The focus should not be on how to deal with excess cost estimates in the future, but how to prevent them from occurring in the first place.

Whilst the CSLR was designed to facilitate a special levy in what was envisaged to be rare occurrences, it was not designed to fund the constant black swan events that have transpired in recent times.

This warrants an immediate review of the systematic issues occurring across the personal advice sector. The focus must be on identifying the common contributing factors, including the role of MIS product failure, so they can be effectively addressed to prevent future large scale consumer losses.

Whilst we acknowledge and welcome ASIC's statement in its 2025/2026 Corporate Plan that it will enhance its processes for early detection of high-risk MISs, to prevent the risk of large scale consumer harm, more needs to be done to prevent such schemes from being established in the first instance.