22 May 2026

The Treasury
Langton Crescent
Parkes ACT 2600

BY ELECTRONIC LODGEMENT

Dear Sir/Madam,

SMSF ASSOCIATION SUBMISSION – Compensation Scheme of Last Resort (CSLR): Reform options to support ongoing sustainability: Options Paper

The SMSF Association welcomes the opportunity to provide this submission in response to the Treasury consultation on *Compensation Scheme of Last Resort (CSLR): Reform options to support ongoing sustainability*.

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

However, the current debate is focused too heavily on how to reallocate escalating costs, and not enough on why those costs are escalating in the first place.

The CSLR will not be made sustainable by simply shifting costs between compliant firms, consumers and victims of misconduct. Sustainability will only be achieved if the right policy and regulatory settings are in place and Government and regulators intervene earlier to prevent large-scale consumer losses before they crystallise into unpaid determinations.

The sharp rise in CSLR claims points to a regulatory failure, not a broad industry failure. The financial advice sector has undergone more than a decade of significant reform. AFS licensees are already subject to clear obligations to act efficiently, honestly and fairly, comply with financial services laws,[1] and manage conflicts of interest.[2] Where misconduct is still occurring at scale, the answer is not simply more cost recovery. The answer is stronger, earlier and more effective enforcement of the existing regulatory framework.

For that reason, the SMSF Association does not support the proposed three-tier waterfall special levy model. It would effectively convert the special levy into an ongoing standard levy for the

[1] *Corporations Act 2001* (Cth) s 912A: these requirements have been in place since 2002.
[2] Ibid: Many of these large-scale consumer losses have been driven by conflict of interests, yet section 912A also requires AFS licensees to have in place adequate arrangements for the management of conflicts of interest that may arise wholly, or partially, in relation to activities undertaken by the AFS licensee.

personal financial advice subsector, further increasing the cost of advice. Under this model the personal financial advice subsector will be paying the proposed maximum subsector cap of $40 million for the foreseeable future. This coupled with the expected rise in ASIC Industry Funding levies is unsustainable for the subsector, and will continue to increase the advice gap, pushing financial planning advice out of reach for more Australians.

We strongly reject the proposals in the consultation paper that purport to deny SMSF investors access to the CSLR or predicating that access on payment of a CSLR levy. Conditioning access to a statutory compensation scheme on payment by a subset of consumers is fundamentally inconsistent with the purpose of the CSLR as a last-resort consumer safeguard.

This proposal is not only nonsensical, but also morally wrong, and in any other environment would likely be labelled victim blaming. It is important to remember that members of SMSFs are consumers, retail investors who obtained licensed financial advice and suffered loss because of poor advice or product failure. They should not be forced to pay an additional levy to preserve access to a statutory compensation scheme. Nor should they be excluded from protection because they chose to hold their retirement savings through an SMSF.

It is not credible or fair to consider levying SMSF investors while continuing to exclude the sector whose product failures have materially contributed to current funding pressures. The inequity is compounded by the continued exemption of the managed investment scheme (MIS) sector — a well-established source of large-scale consumer losses — from contributing to the primary levy. We strongly recommend that the MIS sector a be added as a subsector to fund the primary levy.

Importantly, we believe that the Government should also share the responsibility. The Government is the only stakeholder that has the power to enact and enforce the regulatory settings that participants must operate within. Where systemic gaps, delayed intervention or insufficient enforcement have contributed to large-scale losses, the cost should not fall solely on compliant participants or targeted groups of consumers.

In reality, AFCA members have little influence or ability to discourage poor behaviour by others in their immediate or peer subsectors. The only action they can take is to refer any concerns to ASIC and hope that it prioritises the complaint amongst the thousands of complaints ASIC receives annually.

While it is important to consider reforms to ensure the ongoing sustainability of the CSLR, it is more important, and arguably critical, to focus on how the existing regulatory framework can be more effectively enforced to prevent large scale consumer losses from occurring in the first place.

Given that unpaid claims are more than doubling year on year since the CSLR commenced, we don't need a new funding model – we need an intervention.

We believe this must commence with the Government updating is Statement of Expectations[3] for ASIC, which has not been revised since 2021. The focus should be on preventative regulation and

[3] Australian Securities and Investments Commission, *Statements of Expectations and Intent* (August 2021) <https://www.asic.gov.au/about-asic/what-we-do/how-we-operate/accountability-and-reporting/statements-of-expectations-and-intent/ >.

exploring how it can work more effectively with the sectors it regulates to leverage insights and reach.

We also note that this consultation is occurring in parallel to the consultation on *Curbing lead generation activity*[4] and *Enhancing member protections in the superannuation system*[5]. While these consultations are being held separately, they importantly must be considered collectively given the many interdependencies between the regulatory frameworks. Failure to do so may risk conflicting, overlapping or regulatory outcomes, which would result in further regulatory complexity and cost.

Our detailed responses to the consultation paper are set out below.

If you have any questions about our submission, please do not hesitate to Tracey Scotchbrook, Head of Policy and Advocacy, via email at traceyscotchbrook@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 1.2 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.

[4] The Treasury, *Curbing Lead Generation Activity* (Consultation Paper, 7 April 2026) <https://treasury.gov.au/consultation/c2026-756975 >.

[5] The Treasury, *Enhancing member protections in the superannuation system* (Consultation Paper, 7 April 2026) <https://treasury.gov.au/consultation/c2026-756030 >.

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Executive Summary

The SMSF Association supports the objective of the Compensation Scheme of Last Resort (CSLR), but considers the current consultation is too heavily focused on reallocating funding shortfalls rather than addressing the underlying drivers of escalating unpaid claims.

The sharp increase in unpaid determinations is not the result of broad industry failure warranting ever-increasing levies on compliant participants, but of repeated large-scale misconduct and product failures that should have been prevented much earlier, through stronger, more proactive regulatory intervention.

In that context, the immediate priority should be to stabilise the scheme while also reforming regulatory oversight to reduce the incidence of consumer harm in a timelier manner and reducing the need for future claims.

Consistent with that position, we support targeted technical and integrity measures that help the CSLR operate as a genuine scheme of last resort, including broader deduction powers, selected technical improvements, and a capital-loss approach for unpaid determinations.

We oppose the proposed three-tier waterfall levy model and reject proposals to levy SMSF members or exclude them from accessing the CSLR. Instead, we strongly recommend that the Managed Investment Scheme (MIS) sector be brought into the primary levy framework given its central role in causing ongoing losses.

Government should share responsibility for the current funding shortfall, because it alone can shape and enforce the regulatory settings within which the scheme operates, and it was aware of the issues arising with the MIS sector years earlier.

Sustainability will not be achieved by shifting costs onto victims or compliant firms, but by combining fairer funding settings with earlier intervention, better enforcement, and structural reform that prevents large-scale losses from arising in the first place.

Key Recommendations

- Reform the CSLR with a focus on preventing large-scale consumer losses through earlier, stronger and more proactive regulatory intervention.
- Support targeted integrity measures that help the CSLR operate as a genuine scheme of last resort, including broader deduction powers and selected technical improvements.
- Adopt a capital-loss approach for unpaid determinations, rather than compensating for hypothetical counterfactual investment performance.
- Reject the proposed three-tier waterfall special levy model as unsustainable and inequitable for compliant subsectors.
- Reject any proposal to levy SMSF members or to exclude SMSF investors from CSLR eligibility, on the basis that they are retail consumers and victims of misconduct.

- Add the MIS sector as a subsector that funds the primary levy, reflecting its material role in large-scale losses.
- Government to share responsibility for the current funding shortfall, given its role in setting, maintaining and enforcing the regulatory framework.
- Pursue structural and regulatory reform that improves enforcement, strengthens oversight and reduces the incidence of future unpaid claims.

Proposals and Consultation Questions

Proposal 1 – Enabling CSLR to deduct payments from compensation

1. **Do you support allowing the CSLR operator to reduce compensation payments by considering all relevant amounts that a claimant may receive in connection with the matters covered by an AFCA determination?**

We support this proposal and believe it should improve the integrity of, and sustainability of the scheme be expanding the categories of deductions currently permitted under law.

2. **What factors should the Government consider in terms of timing?**
   - 2.1. **How should the reform balance ensuring timely payment of claims to consumers with ensuring accurate information about other payments?**
   - 2.2. **Should the CSLR have a clawback mechanism for cases where deductible amounts were not known at the time of payment?**

We acknowledge the need to balance the timely payment of unpaid claims, especially for consumers who may be in financial distress, and to ensure the accurate information about other payments, for example where class actions may be in train.

An option could be for the claimant to declare if they are part of any external action that may give rise to compensation. Where the claimant declares yes, the CSLR operator could be provided the discretion to withhold some or all of the unpaid determination amounts.

The challenge will be if the claimant is in financial distress, they will likely need immediate access to the unpaid determination funds.

Whilst another option may be a clawback agreement between both parties, this may be difficult and complex to administer in practice.

If the claimant receives a settlement from a class action, it may not be possible for a third-party, like the CSLR operator, to enter an agreement to receive part or all of the claimant's settlement to repay the unpaid determination they have already received as compensation for their losses. Further complexity may also arise if the settlement is paid into the claimant's superannuation fund.

If the claimant refuses to comply with the clawback agreement, the CSLR operator would likely have to initiate legal proceedings to recover the funds, which also adds further complexity and costs to administer.

We believe the option of a clawback mechanism requires further consideration, including legal implications and costs, before being considered as a potential option for the CSLR operator.

Proposal 2: Expanding CSLR subrogation rights

1. Do you support Option 1 or Option 2 to expand the CSLR operator's subrogation rights?

We do not support Option 1. While amounts received above the compensation paid to the claimant could be retained to offset future scheme costs, we do not believe this is a fair or reasonable outcome for the claimant who has suffered the financial loss.

We support Option 2 in principle, as the CSLR is intended to operate as a scheme of last resort. However, we are concerned how this may operate in practice including pursuing recoveries where it is economical to do so and noting the limited success of recoveries to date.

2. Are there sufficient benefits to pursuing legislative reforms in the context of restrained recoveries?

While the recoveries to date have been modest, it is important options are explored to ensure the CSLR operates as a true scheme of last resort.

We recommend a working group is established with representatives from the financial services, insurance, legal and insolvency sectors to further explore potential options that enable the scheme to operate as intended and balance the outcomes for claimants.

Proposal 3: Technical improvements

1. Do you support the additional technical improvement proposals?

We generally support the additional technical proposals.

However, we are concerned with the proposal to reduce the disallowance period from 15 to 5 sitting days. We understand that this is to enable the CSLR to continue to receive funding to pay unpaid determinations in a timely manner. However, we have concerns that this proposal deviates from the standard parliamentary process and oversight.

2. Which technical improvements should be prioritised?

We believe the proposal to allow payments to multiple accounts should be prioritised for claimants, noting complexities if the unpaid determination can only be paid to one account and the claimants may have separated since the AFCA claim was lodged.

We also believe the non-participant exemptions for further special levies should be prioritised to ensure the scheme operates fairly and equitably for those who have since left the sector.

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

1. **Do you support Option 1 or Option 2 to support scheme sustainability?**
   1.1. **If not, are there alternative options that would better balance certainty, fairness and sustainability?**

We support Option 1; unpaid determinations should be paid on a capital loss approach. The CSLR is a scheme of last resort and should operate as such, focusing on restoring the claimant to their original capital position, rather than compensating for hypothetical investment performance. It is important to remember; the cost of compensation is borne by innocent parties who had no involvement in the misconduct that gave rise to the need for compensation. If this wasn't the case, a stronger argument could be put for counterfactual losses to be included.

2. **What considerations should the Government have for choosing an implementation pathway (fairness, time to implement, cost saving)?**

To ensure a consistent and equitable approach, we believe Option 1 should be implemented via the AFCA scheme.

We believe this option provides two benefits. First, it would ensure a consistent and equitable approach to determining the eligible compensation amount for all claims. It is also our understanding that AFCA currently use different approaches to calculate and award compensation. Having a single model would also provide transparency for all stakeholders in determining compensation claims.

The second benefit is that it would avoid confusion for claimants who may be awarded compensation based on one method by AFCA, only to have the unpaid determination calculated by a different method. This may result in them being eligible for more, but for less to be paid from the CSLR.

We acknowledge that this requires changes to AFCA's systems, processes and governance arrangements, but believe the benefits of consistency, equity and certainty for all stakeholders warrant this change.

3. **Is CPI or Government Bond rate a more appropriate basis for calculating the counterfactual position?**
   3.1. **What alternative rate could be used?**

While we do not support this proposal, we believe CPI would be an appropriate basis.

Proposal 5: Embedding greater certainty in the special levy framework

1. **Do you support introducing a rules based three tier special levy waterfall to manage funding shortfalls when scheme costs exceed one or more sub sector caps? Are there alternative tier structures that would better balance certainty, fairness and sustainability?**

We do not support the proposed three tier special levy waterfall approach to manage funding shortfalls when the scheme costs exceed one or more subsector caps.

Based on the proposed model and recent experience, the only benefit of this model is that it quantifies what is otherwise an unknown contingent liability for the personal financial advice sub-sector and the special levy becomes a standard levy resulting in them being liable for $40 million each levy period for the foreseeable future.

The question has to be asked: how did we get here, given that just under five years ago, the CSLR Proposal Paper[6] recommended an annual subsector cap of $10 million and that the CSLR should operate a capital reserve of $5 million to meet expected outlays.

Looking at the 4th levy period, unpaid AFCA fees totalled more than $18.5 million dollars which itself is now nearing the subsector cap of $20 million. Coupled with what is more than a doubling of unpaid claims since the commencement of the CSLR, as outlined below.

Levy Period	**Estimated Unpaid AFCA Fees**	**Personal Financial Advice**
1st Levy Period	$248,000	$2,400,000
2nd Levy Period	$1,978,000	$18,500,000
3rd Levy Period	$8,001,000	$67,289,000
4th Levy Period	$18,671,000	$126,900,00
Total to date	**$26,811,000**	**$215,089,000**

We don't need a new funding model – we need an intervention.

The proposed waterfall model also fails to acknowledge that the Government and the regulator are also key participants in the CSLR and, as such, should share the same responsibility as the subsectors. Even more so when you consider that they both have the ability to take active steps to intervene and to discourage and disrupt poor behaviour, unlike AFCA members who continue to bear the financial burden.

This is even more concerning given Proposal 6 is considering a special levy on SMSFs, as a connected subsector where the SMSF trustees didn't opt-out or opted in to participate in the CSLR.

This proposal completely disregards the fact to be eligible to be paid an unpaid determination from the CSLR the consumer has paid to receive financial planning advice from a licensed financial adviser, under the supervision of their AFS licensee who is regulated by ASIC and recommended to invest in a financial product, also regulated by ASIC.

In fact, paying to receive the financial advice means they have already paid a CSLR levy through their financial advice fees. We will discuss this further in our response to Proposal 6.

[6] The Treasury, *Compensation Scheme of Last* Resort (Proposal Paper, July 2021) <https://treasury.gov.au/sites/default/files/2021-07/186669_compensationschemeoflastresort-proposalpaper.pdf >.

We also do not support apportioning any CSLR costs based on regulatory effort, as this will inevitably result in ASIC apportioning significant resources to a subsector after a large-scale loss. For example, ASIC currently have more than 40 staff working on 24 different investigations[7]. This will arguably be attributed to the personal financial advice subsector, who will be hit again with these costs when they receive their next ASIC Industry Funding Model levy.

2. **Is 'connection' an appropriate basis for allocating costs across tiers in a repeatable framework?**
    - 2.1. **If not, what alternative approach should be used, and how could it be implemented effectively in a way that is sustainable and facilitates timely payments of compensation to consumers?**
    - 2.2. **How should 'connected' sub sector/s be identified in practice?**
3. **What evidence or data should be used to establish "connection" to the losses (recognising the challenges of attributing fault across a value chain)?**
    - 3.1. **What governance or assurance steps would improve confidence in the classification of a sub sector as 'connected'?**
4. **Are the proposed special levy caps appropriately calibrated to provide certainty and support sub sector viability, while enabling timely compensation payments?**
5. **If not, at what level should special levy caps be set for each tier, and how do they produce a better overall outcome for the financial system?**

We do not support the waterfall tiered model, including the concept of a connected sector.

An interim funding solution is needed to address the immediate funding shortfalls, as identified in the consultation paper. The immediate focus must be on preventing these large-scale losses from occurring in the first place - not just to address the funding pressures on the scheme, but the wide scale consumer harm they are causing.

We acknowledge that the government is consulting on a range of measures, however as stated earlier in this submission, more regulation will not prevent those who seek to exploit and/or breach the law for their own personal financial gain.

Proactive, responsive and effective regulation is needed to enforce compliance with the law, which arguably already prohibited much of the recent misconduct. This is evidenced by the enforcement action that has already commenced by ASIC including civil proceedings against AFS licensees for failing to ensure their financial advisers complied with the best interest obligations.

Rather than considering how the CSLR funding model can be amended in response to recent cases that have caused substantial consumer detriment, we should be exploring how ASIC can be appropriately resourced, equipped, and structured to take proactive action and prevent the harm at its earliest juncture. Early intervention is vital for addressing inappropriate behaviours and ensuring activities are not left unfettered or enabled to evolve into industrial-scale harm.

[7] Joe Longo, 'Senate Economics Legislation Committee Supplementary Budget Estimates' (Opening Statement, 9 October 2025) < https://www.asic.gov.au/about-asic/news-centre/speeches/senate-economics-legislation-committee-supplementary-budget-estimates-opening-statement-9-october-2025 >.

We believe this should include how ASIC can not only seek more information and reporting from its regulated population but also respond promptly to readily identify potential issues that could lead to large-scale consumer losses. While it is unfortunately not possible to prevent any consumer harm from occurring, we should not be experiencing sequential large-scale losses year on year.

To address the immediate funding shortfall, we believe the most efficient and equitable option is to spread the cost broadly across all subsectors, based on each AFCA member's capacity to pay within each subsector.

Further, we strongly recommend that the MIS sector, who are a key contributor to these large-scale losses, must be added as a subsector to fund the primary levy.

Importantly, we believe that the Government should also share responsibility for funding the foreseeable CSLR special levies. The Government is the only stakeholder that has the power to enact and affect the regulatory settings that participants must operate within. Furthermore, given the unprecedented and critical CSLR funding shortfall situation, we believe it is appropriate for a material proportion of the funds raised by recent ASIC enforcement action, be redirected to the CSLR. We note recent media commentary[8], that ASIC fines and penalties are currently at record levels and which in part relate to recent product failures.

Proposal 6: Considering responses to the role of SMSF losses in reducing pressure on the CSLR

1. Do you see merit in levying a subset of SMSFs to support CSLR special levy funding pressures?

It is important to remember SMSF members are private investors, they are not retail facing product issuers, AFCA members or licensed trustees. They were not the perpetrators of the misconduct that in the past has given rise to the need for CSLR compensation, they are the victims of this misconduct.

It is also important not to conflate product failure with the legitimate and genuine operations of an SMSF. In all the CSLR compensation cases involving SMSFs to date, the SMSF has not failed. It is the product that the SMSF trustees were recommended to invest in that failed. As mentioned earlier, given the advice was provided by a licensed financial adviser who has a statutory obligation to act in the best interest of the client, and the recommended product was subject to ASIC regulatory oversight, the SMSF trustee had every reason to trust and rely on that advice.

To single out a cohort of retail investors and compel them to either pay a CSLR levy or be ineligible to claim compensation from the CSLR is incommensurable and morally wrong. If an SMSF investor is the victim of misconduct that results in an unpaid AFCA determination they should be treated just like any other retail investor. Providing a level of compensation to victims of misconduct who have

[8] Australian Securities and Investments Commission, 'ASIC secures record $350 million in civil penalties and $583 million back to Australians in second half of 2025' (Media Release 26-032MR, 25 February 2026) < https://www.asic.gov.au/about-asic/news-centre/find-a-media-release/2026-releases/26-032mr-asic-secures-record-350-million-in-civil-penalties-and-583-million-back-to-australians-in-second-half-of-2025/ >.

unpaid ACFA determinations is why the CSLR exits and we shouldn't be aspiring to a regime that excludes certain retail investors simply because they are a member of an SMSF.

Further, the Australian Consumer Law expressly prohibits requiring consumers to pay for rights that are already provided under statute. Section 29(1)(n) makes it unlawful to represent that a consumer must pay for a right that is wholly or partially equivalent to a statutory entitlement. The Australian Consumer and Competition Commission (ACCC) has consistently reinforced that statutory consumer rights must be automatic and cannot be replaced, restricted or sold back to consumers through additional charges.

We therefore question if requiring a consumer to pay for the right to access the CSLR because they invested their retirement savings through an SMSF could be characterised as requiring payment for a right the consumer is already entitled to under statute. If so, this proposal would be in direct conflict with the stance of the ACCC, being the independent statutory authority to enforce Australia's competition, fair trading and importantly, consumer protection laws.

It is also wrong to assume SMSF trustees who receive financial advice are not already contributing to the funding of the CSLR. Like all private investors who receive financial advice, the advice fee payable by the SMSF trustees would typically include an amount of the CSLR levy payable by the financial adviser. As highlighted in a recent FAAA member survey[9], the commercial reality is that in the vast majority of cases the cost of the CSLR levy is simply passed on to the client.

This proposal simply shifts the cost of a regulatory and policy failure onto consumers, effectively asking them to fund a shortfall that has arisen from the inability of the government and regulator to adequately protect them.

2. Two sub-options are provided to define the SMSF cohort subject to the levy (that is, an opt-in or an opt-out mechanism). Which option do you think best balances the need for scheme sustainability with the risk of imposing costs onto SMSFs with no relevant connection to advice-related misconduct? Or is there an alternate option that would best balance these factors?

2.1. What factors should be considered for an opt-in or opt-out model to minimise the regulatory burden for SMSFs?

We strongly reject the proposal that a consumer who invests their retirement savings through an SMSF should pay a CSLR levy or forfeit any future entitlement to claim against the scheme if they are the victims of misconduct.

As mentioned SMSF trustees are not retail product issuers, AFCA members or licensed trustees, so we fail to see how the SMSF sector could ever come under the classification of a "connected subsector".

SMSF members are individuals who have sought licensed financial advice and acted on that advice in good faith. They are only "connected" by virtue of being victims of advice misconduct or product failure that gives rise to CSLR compensation.

[9] 'CSLR levy to shrink adviser numbers: FAAA Survey', *Financial Advice Association of Australia* (Web Page, 7 May 2026) <https://faaa.au/cslr-levy-to-shrink-adviser-numbers-faaa-survey/ >.

To consider an opt-in or opt-out model to be eligible to receive compensation based on this fact is morally wrong.

In practice, it is unclear how consumers can feel confident in licensed advice if they must pay an annual levy to protect themselves in the event the advice provided turns out to be inappropriate advice or the product fails. This is hardly instilling confidence in the adviser and the advice they provide, and it is difficult to see how this aligns with the stated objective in the consultation paper to strengthen confidence in the financial system.

There are also many logistically issues with the proposed opt-out/opt-in approach. Requiring SMSFs to make a once off election requires extra record keeping and reporting and it's unclear how this election would then flow through to the levy collection mechanism. In all likelihood, the number of participating SMSFs in the CSLR pool under either the opt-out or opt-in option would be small meaning the CSLR levy payable by participating SMSFs would be considerable.

An election not to pay the CLSR, would also have the effect of prohibiting all future individuals who join the SMSF from being eligible to seek compensation from the CSLR. While these individuals could choose to commence a new SMSF which could then elect to participate in the CSLR, this would necessarily involve extra cost and complexity.

OPTION 1 – Opt-out and opt-in mechanisms

Imposing the levy alongside an opt-out mechanism

3. **Would allowing SMSFs to opt-out from the levy and CSLR compensation eligibility be an appropriate means to target the levy? What benefits and risks might this approach entail?**
4. **When should an MSF be required to opt-out or begin paying?**
5. **Should an SMSF be able to revoke their decision?**

For the reasons stated above, we strongly reject this proposal.

We would add, the rationale behind this option completely ignores the fact that in the case of nearly all the 'black swan' events, including Shield and First Guardian the consumer sought professional advice, which is subject to regulatory oversight. In most cases, they were also recommended to invest in a registered MIS, again subject to regulatory oversight.

The consumer did not invest in a higher-risk financial product on their own accord.

In fact, they only reason they are entitled to receive compensation from the CSLR is because they did seek professional advice and invested in a regulated retail financial product. It is therefore unclear why, given they have acted responsibly and sought professional advice, yet suffered a financial loss, it is even being suggested that they should contribute to fund their own compensation when the regulatory system set up to protect them has failed them.

We do not believe it will improve the predictability or sustainability of how levy shortfalls are funded given as we stated earlier it is likely to have very low take up, further noting that around 20 per cent of SMSFs seek licensed financial advice.[10]

Imposing the levy alongside an opt-out mechanism

6. **Would allowing SMSFs to opt-in to the levy in order to maintain CSLR compensation eligibility be an appropriate means to target the levy? What benefits and risks might this approach entail?**
7. **When should an SMSF be required to opt-in?**
8. **Should the timing of opting in impact their eligibility for a claim from the CSLR?**
9. **If SMSFs were included within the CSLR Special Levy Framework, what do you see as a reasonable and sustainable maximum annual levy per SMSF?**

Further to our above comments, we strongly reject this proposal.

As stated earlier, it is completely inappropriate to single out a cohort of consumers who seek licensed financial planning advice on how to invest their retirement savings and compel them to either pay a CSLR levy or they forfeit their future eligibility to seek compensation from the CSLR. SMSF members are private investors and deserve the right to be treated like all other private investor who may be the victims of misconduct. They should not be deemed ineligible simply because their retirement savings are held within an SMSF structure.

OPTION 2 – Excluding SMSFs from CSLR eligibility

10. **Excluding SMSFs from CSLR eligibility may help to alleviate funding pressures on the scheme. How do you think this option compares to the sub-options in option 1 above in terms of scheme sustainability and risks for the SMSFs?**

We consider this proposal to be a more egregious approach than proposing consumers contribute to the funding of the CSLR levy.

To argue that a consumer who exercises direct control over their fund's investment strategy, but who seeks professional advice to support them in their role as a trustee of an SMSF should be excluded from the right to access compensation in the event they become a victim of advice misconduct is reprehensible. This statement completely disregards the role and responsibility of the financial services regulatory framework and stakeholders to protect the consumer and strengthen confidence in the financial system.

Further, to state that this aligns with longstanding policy basis for excluding SMSFs from superannuation fund financial assistance in Part 23 of the *Superannuation Industry (Supervision) Act 1993* (Cth) (SIS Act), is misguided.

[10] Vanguard Australia, 'New SMSF trustees propel uptake of financial advice, but $1 trillion sector still has significant advice gaps', (Media Release, 28 May 2025) < https://www.vanguard.com.au/corporate/media-centre/2025/new-smsf-trustees-propel-uptake-of-financial-advice-but-sector-still-has-advice-gaps >

Part 23 provides a framework for providing financial assistance to regulated superannuation funds (other than SMSFs) that suffer an 'eligible loss' (defined in the SIS Act) as a result of fraudulent conduct or theft, subject to certain conditions. For an accumulation fund, the loss must have caused substantial diminution of the fund leading to difficulties in the payment of benefits. For a defined benefit fund, the eligible loss is so much of a loss that a standard employer-sponsor is required to pay to the fund but would be unable to do so without becoming insolvent[11].

On that basis, Part 23 operates as a safeguard measure to ensure the sustainability of the APRA superannuation fund sector. As such, it has been applied in only a handful of occasions throughout its history.

It is worth noting, at the time, the decision to exclude SMSFs from Part 23 was heavily influenced by the heighten risk of moral hazard. That is, the SMSF trustee's decision to invest without advice in a higher risk financial product being influenced by the knowledge they may be compensated for financial losses under Part 23 if the product fails. This same moral hazard does not exist under the CSLR which seeks to provide a level of compensation in the event the financial advice provided to the SMSF trustees was inappropriate.

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

1. **If proposal 6 were implemented, should the Government identify a 'lower-risk' segment of the MIS sector that would not be subject to the special levy?**
    - **1.1. If so, what indicators do you consider should be used to identify a MIS as low risk?**
    - **1.2. If additional data were required to be collected to implement risk informed levying, would this option create any additional regulatory burden for the MIS sector?**
2. **What do you consider the consequences would be of excluding low risk MISs from the special levy?**
3. **How should the Government weigh the trade-off between minimising administrative costs with the benefits of a more targeted approach?**

In 2022, Treasury advised the government that *failures of Managed Investment Schemes (MISs) have and will continue to be a significant category of unpaid claims.*[12]

Four years on, and Treasury's advice has proven correct, with approximately 12,000 consumers alone impacted by the collapse of Shield and First Guardian. Of note in the same advice Treasury estimated that investments lost as part of MIS failures from 2009 to 2022 was approximately $3.5 billion.

[11] The Treasury, *Options for Improving the Safety of Superannuation* (Report of the Superannuation Working Group, 28 October 2002), ch 10: Financial Assistance to Failed Superannuation Funds <https://treasury.gov.au/publication/options-for-improving-the-safety-of-superannuation-report-of-the-superannuation-working-group/10-financial-assistance-to-failed-superannuation-funds >

[12] The Treasury, *Financial Services Royal Commission – ongoing implementation and next steps* (Ministerial Submission No MS22-000942, 22 June 2022) < https://treasury.gov.au/sites/default/files/2024-06/foi-3586.pdf >: FOI 3586

In 2025, ASIC found that wide-spread poor practice of compliance plans for MISs, which it stated can be indicative of governance failings and risk exposing consumers to harm[13].

Yet, despite both Treasury' advice in 2022, a review of the MIS regulatory framework in 2023[14], (which notably had a reporting date of May 2024 which was never met), and ASIC's more recent findings there has been no change in the regulation or oversight of MISs. Rather, the response has been yet another consultation earlier this year.

While it is pleasing to see MISs are now being considered in the CSLR funding model, it is perplexing why the sector is only being considered as a 'connected' subsector. In fact, the consultation paper suggests 'the MIS sector would likely be one of the subsectors connected' despite the fact MIS product failure has and continues to be a root cause of a significant amount of unpaid AFCA determinations.

It is also difficult to reconcile this fact when the same consultation paper is proposing to levy consumers who invest their retirement savings through an SMSF to ensure they are eligible to receive CSLR compensation or excluding them from being eligible at all if they suffer a financial loss that may be as a result of MIS product failure.

We recommend the MIS subsector be added as a new subsector to fund the primary CSLR scheme.

The levy should be applied to all MISs. There is no justification or reasoning to segment the subsector by risk, as this is inconsistent with how it is applied to current leviable subsectors. Rather, as acknowledged in the design of the current CSLR funding model, leviable entities are not responsible for the misconduct giving rise to the compensation being claimed but are nonetheless being required to pay for it.

We also recommend that the government expedite its review of the current regulatory framework for MISs with the objective of trying to stem future large-scale losses because of MIS product failure.

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

1. **To what extent are AFCA determination liabilities avoided through misuse of corporate and insolvency frameworks, shifting CSLR costs onto the broader sub-sector?**
    - 1.1. **To what extent does this include transactions between solvent entities? Do transactions which result in the evasion of these liabilities also occur between unrelated entities?**
2. **Are there any gaps or limitations in the current corporate and insolvency frameworks that may allow assets or value to be shifted away from the respondent firm? How might the existing**

[13] Australian Securities and Investments Commission, 'Review of Managed Fund Compliance Plans. Failing to Plan is Planning to Fail' (Online Article, 2 June 2025) https://www.asic.gov.au/about-asic/news-centre/articles/review-of-managed-fund-compliance-plans-failing-to-plan-is-planning-to-fail/

[14] The Treasury, *Review of the regulatory framework for managed investment schemes* (Consultation Paper, 2 June 2025) < https://treasury.gov.au/review/review-regulatory-framework-managed-investment-schemes >

provisions be enhanced to increase their deterrent effect to help prevent the occurrence of the underlying transactions and conduct?

3. **If a new related-entity liability mechanism was established (Option 2), how should it be designed to appropriately share responsibility for AFCA liabilities where related entities are benefiting from the respondent firm's business or activities, while ensuring it remains proportionate, builds in appropriate safeguards and preserves long-standing corporate principles?**

The insolvency legislative framework is incredibly complex, however reform is needed to deter current practices to avoid financial responsibility, especially where parent companies financially gain from such practices.

We note that the Treasurer has requested the Productivity Commission undertake an inquiry into regulatory barriers to business dynamism in Australia, and identify options for reducing these barriers where appropriate, in order to promote innovation, productivity growth and Australia's international competitiveness[15].

The terms of this inquiry include to identify and evaluate key processes and barriers to business entry, expansion and exit, including but not limited to the design, operation and integrity of corporate and personal insolvency frameworks.

We recommend that this inquiry is leveraged as an opportunity to explore and road test potential options, including reform, to prevent the ability of firms to prevent situations where the respondent firm is part of a corporate group whose other entities remain solvent and continue trading.

[15] Productivity Commission, *Reducing Barriers to Business Dynamism* (Terms of Reference, 12 May 2026) <https://www.pc.gov.au/inquiries-and-research/business-dynamism/terms-of-reference/ >