

Tuesday, 4 March 2025

By email: [CSLRreview@treasury.gov.au](mailto:CSLRreview@treasury.gov.au)

Financial System Division  
Markets Group  
The Treasury  
Langton Crescent  
PARKS ACT 2600

Dear Director

**Re: Compensation Scheme of Last Resort post-implementation review**

Thank you for the opportunity to provide a submission in relation to the Compensation Scheme of Last Resort (CSLR) post-implementation review.

Consumer Action Law Centre strongly supports the joint submission prepared by CHOICE and other consumer organisations. We provide this supplementary submission in response to the CSLR to underline the importance of the scheme, and to add an additional broad perspective on its value.

**About Consumer Action**

Consumer Action is an independent, not-for-profit consumer organisation with deep expertise in consumer and consumer credit laws, policy and direct knowledge of people's experience of modern markets. We work for a just marketplace, where people have power and business plays fair. We make life easier for people experiencing vulnerability and disadvantage in Australia, through financial counselling, legal advice, legal representation, policy work and campaigns. Based in Melbourne, our direct services assist Victorians, and our advocacy supports a just marketplace for all Australians.



## Four key recommendations

1. Do not reduce the scope of the Compensation Scheme of Last Resort in any way.
2. Expand the eligibility criteria to cover all financial products provided to retail clients.
3. Develop legislative reform to allow a Court to preference payment of compensation to victims of financial misconduct over civil penalties, including a payment to the CSLR in certain circumstances.
4. Consider further legislative reforms to prevent future significant sector levy shortfalls. This could include levying costs across the entire financial services and credit sector and empowering the Compensation Scheme of Last Resort to recover costs from parent entities or directors. Solutions to the current levy on the financial advice sector must not include reducing the scope of the Compensation Scheme of Last Resort.

## Policy justification for the CSLR is as important as ever

We refer to Consumer Action's previous submissions and strong support for establishing the CSLR<sup>1</sup> given the deep and widespread harms experienced by victims of financial services misconduct. We have observed for many years – and the Financial Services Royal Commission highlighted – entrenched predatory conduct of credit providers and grossly negligent financial advice, including mis-selling of complex investment products and collapses of managed investment schemes. This conduct, and associated community concern, lives in Australia's recent history, and must remain in clear view as Treasury reviews the CSLR and makes recommendations to Government on its future.

We are in a cost-of-living crisis. Community trust in our major institutions, including financial services institutions, has not recovered since the Financial Services Royal Commission.<sup>2</sup> For people putting their trust and life savings into financial products that fail, the impact is losing the family home, retirement income and the future that ordinary Australians have worked their entire lives for.

The Government must maintain its public position, in response to the Financial Services Royal Commission Report Recommendation 7.1, to establish and maintain the CSLR:<sup>3</sup>

*"For there to be confidence in the financial system's dispute resolution framework, it is important that where consumers and small businesses have suffered detriment due to failures by financial firms to meet their obligations, compensation that is awarded is actually paid."*

## Impact of the CSLR

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<sup>1</sup> Consumer Action, Discussion Paper: Implementing Royal Commission Recommendation 7.1 – Establishing a Compensation Scheme of Last Resort, February 2020. Available at [https://consumeraction.org.au/wp-content/uploads/2020/02/200219\\_CSLR\\_Submission\\_FINAL.pdf](https://consumeraction.org.au/wp-content/uploads/2020/02/200219_CSLR_Submission_FINAL.pdf).

<sup>2</sup> Roy Morgan (27 February 2025) Australia's most trusted and distrusted brands <https://www.roymorgan.com/findings/australias-most-trusted-distrusted-brands-the-benchmark-recovery-rate-webinar>.

<sup>3</sup> Government response to the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (2019) <https://treasury.gov.au/sites/default/files/2019-03/FSRC-Government-Response-1.pdf>, page 36.

There are hundreds of good news stories and lives improved following the commencement of the CSLR. According to its website, to date there are 151 claims paid and \$13.8 million has been compensated by the CSLR.

According to the Finity 3<sup>rd</sup> Levy Report,<sup>4</sup> it is expected that the CSLR will make \$79,971,000 in payments between 1 July 2015 to 30 June 2026 – driven by the failure of two major financial advice firms. There are 1,359 in scope complaints identified by AFCA since September 2022.<sup>5</sup> These figures represent compensation people who, but for the CSLR, likely would never have received any redress for their loss.

### **Missed opportunities due to limited scope of the CSLR**

The limited scope of the CSLR has missed opportunities to prevent the erosion of confidence in the dispute resolution processes and the broader financial system. This has led to a significant financial burden on the Government. In our previous submissions on the establishment of the CSLR and to the Financial Services Royal Commission, we outlined the predatory misconduct of ACBF/Youpla against First Nations communities.<sup>6</sup> In 2021 we called for the CSLR to incorporate insurance in its remit, and specifically funeral insurance and funeral expense plans, before ACBF/Youpla would inevitably collapse and leave thousands in distress without funds for Sorry Business.<sup>7</sup> These products have targeted First Nations consumers and communities experiencing vulnerability. Unfortunately, the CSLR was not legislated in time, even if the Government had adopted our recommendation to include funeral expense plans., Government has had to step in and establish (and operationalise) an entirely separate redress scheme for victims. We are very supportive of Government stepping in and working with First Nations organisations and experts to engage with community on the redress scheme. However, had insurance and risk-management products been within the CSLR's scope, the mechanics and expertise of the CSLR could have been utilised and saved the Government well over \$100 million of dollars in delivery of the Youpla Support Program.

The ACBF/Youpla collapse shows the serious risks of defining the CSLR so narrowly. Business models that rely on regulatory loopholes to distribute their products without appropriate oversight are inherently high risk and likelier to collapse. Expanding the financial services and credit licensing regime over these products confers legitimacy as well as increases security – but often it's too little too late, with ACBF/Youpla collapsing shortly after funeral plans were defined as financial products. Those products and services brought within the licensing regimes to address systemic conduct issues<sup>8</sup> should always be included in the CSLR to safeguard against serious consumer harm.

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<sup>4</sup> [https://cslr.org.au/sites/default/files/documents/2025-01/CSLR\\_FY26%20Initial%20Estimate.pdf](https://cslr.org.au/sites/default/files/documents/2025-01/CSLR_FY26%20Initial%20Estimate.pdf), p2.

<sup>5</sup> Ibid, p34.

<sup>6</sup> See various submissions: <https://consumeraction.org.au/tag/banking-royal-commission/>.

<sup>7</sup> Consumer Action, Submission to the Senate Economics Legislative Committee, <https://consumeraction.org.au/wp-content/uploads/2021/12/2021-12-15-Joint-consumer-submission-to-the-Senate-Economics-Legislation-Committee-Financial-Accountability-Regime-and-Compensation-Scheme-of-Last-Resort.pdf>.

<sup>8</sup> Consider other products and services which exploited regulatory loopholes to operate unlicensed and cause consumer harm for years, before being brought within the AFSL/ACL regimes: claims handling services, digital currencies and exchanges, buy now, pay later.

In stark contrast, the United Kingdom's Financial Services Compensation Scheme has included funeral plans since 2022,<sup>9</sup> as well as prudentially regulated insurance including annuity pension policies.

## Future of the CSLR

As outlined in the CHOICE submission, the reach of the CSLR should be expanded to incorporate all or a large proportion of financial products provided to retail clients, and the compensation cap increased in line with AFCA. Fundamentally, any consumer who has a successful AFCA claim against a financial services or credit licensee that has failed to pay should be covered by the CSLR.

In addition to these observations, we are of the view that the CSLR will likely take on greater significance with the growth of cryptocurrency and as other innovative financial products emerge in the market. Digital currencies have the potential to become highly mainstream and accessible, based on the uptake to date (and despite the lack of regulation in Australia). If the Government proceeds to expand the definition of financial product in the Corporations Act to include digital currencies, their highly speculative nature could result in myriad AFCA claims for compensation. This may result in further levies on the financial advice sector, or the sector refusing to deal with digital currencies at all. While digital currencies and exchanges commonly present on Consumer Action's frontlines in the complex web of a scam, as the currency is legitimised through regulation, Government will need to consider the impacts of associated financial misconduct. In our view the CSLR has an important role to play to maintain trust and protect consumers in the uncertainty of an evolving financial services market.

## Funding model

We understand that the significant costs of scheme payments for two financial advice firm collapses are driving the headline concerns about the sustainability of the CSLR. We do not believe the solution will be found in any reduction in the scope of the CSLR.

In 2017, the Ramsay Review identified that 90% of the unpaid predecessor scheme determinations related to financial advice.<sup>10</sup> The systemic issues in the financial advice sector were always going to cause problems by recovering the cost of bad actors against the rest – but it is more equitable to spread it on the businesses profiting than consumers suffering through no fault of their own. We expect that uplifted regulation of financial advisers and bad actors exiting the sector since the Financial Services Royal Commission has reduced the risk of future situations leaving hundreds out of pocket. The Government can further address this risk by providing ASIC with ongoing funding and a clear mandate to prevent poor outcomes in the financial advice sector. Any reduction in the scope of the CSLR would be an unacceptable outcome for consumers and their confidence in the financial services industry.

As outlined above, the CSLR remains essential to provide redress for devastating losses caused by corporate misconduct. Treasury should consider alternative ways to spread the funding cost across the financial services sector. At a minimum, the CSLR should be able to receive penalties for associated misconduct paid to the Consolidated Revenue Fund (CRF).<sup>11</sup> Regulatory proceedings may precipitate the collapse of a company that has

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<sup>9</sup> [Funeral plans protection | Check your money is protected | FSCS](#)

<sup>10</sup> Review into External Dispute Resolution and Complaints Framework, Supplementary Final Report, p 4. [Review of the financial system external dispute resolution and complaints framework](#)

<sup>11</sup> In the case of Dixon Advisory, \$7.2mn was paid to the Commonwealth following ASIC's civil penalty proceedings.

engaged in serious and systemic misconduct,<sup>12</sup> resulting in limited funds to compensate the consumers who have had life changing amounts taken from them. Given the legislative hurdles for ASIC to seek compensation on behalf of affected consumers, providing the penalties to the CSLR would support a fairer outcome than merely disappearing into the CRF. It would also ameliorate criticism of ASIC for taking enforcement proceedings that are associated with the collapse of a company.

In this context, Treasury could also consider a version of recent new provisions in the Scams Prevention Framework that allow a Court to consider making orders for compensation to victims before any civil penalty is paid, for the same reason that insolvency of a regulated entity may prevent consumer redress:<sup>13</sup>

58FD Preference must be given to compensation for victims

If a court considers that:

- (a) it is appropriate to order a person (the *defendant*) to pay a pecuniary penalty under an SPF civil penalty order in relation to a contravention or conduct; and
- (b) it is appropriate to order under Subdivision G the defendant to pay compensation to a person who has suffered loss or damage as result of that contravention or conduct; and
- (c) the defendant does not have sufficient financial resources to pay both the pecuniary penalty and the compensation;

the court must give preference to making an order for compensation.

Of course, victims have the right to full redress for financial firm misconduct and Treasury should consider including a provision of this nature in relevant financial services legislation. However, one additional consideration for Courts could be that if a business is likely unable to repay redress in full, even before a civil penalty is paid, then a payment to the CSLR might be prioritised.

Treasury should also consider if levies should be applied across the entire financial services industry, possibly in alignment with the ASIC industry funding levy.<sup>14</sup> The entire sector benefits from the deterrent impact of the CSLR and better outcomes for consumers, who are provided with the means to continue participating in the market. It would also address the fact that risky financial products inappropriately recommended to consumers are generally designed and distributed by large operators that are not subject to the CSLR or its levy. Misconduct across the whole sector – for example, public companies and their auditors – equally contributes to poor outcomes for investors.

From time to time the Government may need to consider providing funding for extreme circumstances like the current \$70mn liability. The Government should commit to funding in preference to any reductions in the CSLR's coverage or operation.

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<sup>12</sup> Apart from Dixon Advisory, see also the IPO Wealth / Mayfair 101 proceedings.

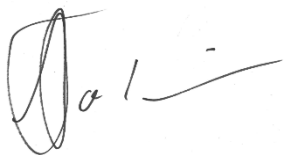
<sup>13</sup> Section 58FD *Competition and Consumer Act* 2010, inserted by the *Scams Prevention Framework Act* 2025.

<sup>14</sup> <https://download.asic.gov.au/media/uksbu5zx/2023-24-actual-levies-summary-published-8-november-2024.pdf>

Thank you for the opportunity to provide our submission to Treasury's review of the CSLR. Should you have any questions, please contact Rose Bruce-Smith at [rose@consumeraction.org.au](mailto:rose@consumeraction.org.au).

Yours faithfully,

**CONSUMER ACTION LAW CENTRE**



**Stephanie Tonkin**  
CEO

