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

May 29, 2026

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Overview

The CSLR plays a vital role in Australia’s financial services dispute resolution framework. A failure by a financial firm to pay compensation awarded to someone by the Australian Financial Complaints Authority (AFCA) is often a sign that something has gone very wrong with the firm.

The CSLR prevents people in these situations from suffering the full cost of the firm’s professional misconduct. By preventing victims of misconduct from bearing the full cost of that misconduct, the CSLR provides consumers with confidence in the integrity of Australia's financial system. In the wake of several recent high-profile failures, maintaining consumer confidence is more important than ever.

The sustainability of the CSLR depends on preventing harm before it occurs. The recommendations made in our joint submission to the consultation on lead generation and the Super Consumers Australia submission to the consultation on enhancing member protections are essential to address the scheme’s funding pressure. These recommendations will address the conduct that has driven consumers to make the majority of CSLR claims to date, and closing these loopholes will help stabilise the scheme over time.

Broadening the charging base, including SMSFs and MISs within the special levy framework will distribute these costs across the sectors most connected to these losses. Expanding the funding base will make the scheme more sustainable while upstream prevention reforms take effect. The people who have suffered financial harm through misconduct should not be punished to relieve the scheme’s funding pressures. Cutting compensation is a band-aid solution that says to Australians we are not confident we can reduce risks in the system. Industry, government, regulators and consumer groups are custodians of this system. We have a collective responsibility for its failures and for preventing this harm from occurring again.

Recommendations

Recommendation 1: The CSLR should be given the power to deduct from payments to claimants amounts received or receivable by claimants in respect of the same losses provided they are determinable at the time of the claim (Proposal 1).

Recommendation 2: The CSLR should be given broad powers of subrogation to assist it to collect on debts owed to claimants in respect of amounts paid out to those claimants (Proposal 2).

Recommendation 3: The CSLR should only be able to retain amounts paid out to claimants plus its reasonable costs of collection of those amounts and should be required to pay any amounts above that to the claimants to whom those amounts were originally owed by the financial firm.

Recommendation 4: The well-established counterfactual 'but for' test should continue to apply when calculating CSLR compensation. None of the alternatives in Proposal 4 should be adopted.

Recommendation 5: Treasury should provide as much certainty and transparency as possible around how it will determine an entity is connected for the purposes of imposing a special levy (Proposal 5).

Recommendation 6: Treasury should undertake and publish analysis of capacity to pay and the appropriateness of a $40m sub-sector cap.

Recommendation 7: All SMSFs should contribute to special levies where required and be covered by the CSLR. Proposal 6 should not be implemented.

Recommendation 8: All managed investment schemes should pay special levies to the CSLR calculated based on assets under management (Proposal 7, Option 1).

Recommendation 9: Expand the CSLR's powers to recover unpaid AFCA determinations within corporate groups (Proposal 8).

Recommendation 10: Amend section 127 of the Australian Securities and Investments Commission Act 2001 to facilitate more efficient information sharing with AFCA and the CSLR

Recommendation 11: Empower AFCA to assess and join related entities pre-determination, to divert claims away from the CSLR.

Importance of the Compensation Scheme of Last Resort

Despite operating for fewer than two years, the CSLR has already paid out life-changing amounts of compensation to many consumers who were innocent victims of financial firm misconduct. For superannuation consumers in particular, financial firm misconduct can have devastating impacts on a person's security and dignity in retirement. The availability of some compensation from the CSLR - even though it will rarely cover the entire loss - is the difference between a modest retirement and a retirement in poverty for some consumers.

Significant harms of firm misconduct

Recent financial collapses such as First Guardian Master Fund, Shield Master Fund and Australian Fiduciaries have demonstrated the significant negative impact that misconduct can have on consumers. Most of the victims of these schemes were superannuation consumers. The money involved came from mandatory superannuation guarantee payments the Government requires every Australian to contribute in order to ensure their retirement security. Unscrupulous lead generators and financial advisers convinced hard-working people to move their super into high risk, inappropriate investments.

The result is that people who did everything they were supposed to do - work hard, save money for retirement, take financial advice - now have no retirement savings and very little hope of getting much back from the liquidator. The responsible entities of the managed investment schemes involved have gone into liquidation. Many of the financial advice firms involved have gone into liquidation.

Peter's story

Super Consumers published a news article about Peter (not his real name) who was convinced to move his super into a platform and invest over $440,000 in First Guardian Master Fund. Liquidators for First Guardian recently confirmed that it is unlikely that investors will get any of their money back. At 64 years old, Peter can no longer afford to retire and is worried he will have to work until he dies.

Impact of the CSLR

It is not easy to access the CSLR:

- A consumer must first have a right to make a complaint to AFCA: there is a narrow scope of issues, licensed products and services covered.
- The financial firm must be an AFCA member - membership may lapse as soon as one year after a firm becomes insolvent.
- Consumers must have strong evidence of misconduct in connection with their complaint.

- It can take a long time before a consumer gets a determination from AFCA, especially where there are thousands of complaints about a single firm.
- Consumers must then attempt to collect on any amount they are awarded and persevere undeterred in the face of successive failures by the financial service provider over time to pay.
- Once it is clear that the firm will not or cannot pay - and there is no other source of compensation available - the consumer can apply to the CSLR for compensation.
- If compensation from the CSLR is denied, there is no clear right of appeal or review.

Due to the $150,000 compensation cap, many consumers will not be fully compensated. For superannuation consumers, the cap does not provide enough money to support a standard of retirement for a typical person. This is the case even when combined with the Age Pension. Our retirement standard suggests the typical single person who owns their own home and is about to retire needs a little more than double that to maintain their living standard in retirement ($310,000).

Peter's story

The advice firm that authorised the financial adviser who convinced Peter to invest his super in First Guardian is in liquidation. If Peter is able to obtain a determination against the firm, they are unlikely to pay it, and Peter will have to make a claim from the CSLR.

Using ASIC's Moneysmart Superannuation Calculator, Super Consumers determined that it would take someone in a similar situation to Peter around 24 years of working to earn back the $440,000 in superannuation he has lost. If he receives the maximum CSLR payout, it would take him around 15 years. He is 64. He does not have another 15 years to work.

Without the CSLR, many of the people affected by the recent collapses would be entirely reliant on the Age Pension for their basic living expenses in retirement. Our February 2025 joint submission contains examples of cases where the CSLR has provided a lifeline to people left in difficult financial situations as a result of professional misconduct.

Future of the CSLR

The CSLR must continue to play a key role in delivering justice to consumers who have suffered a loss due to the misconduct of financial firms, thereby restoring and maintaining confidence in the financial services industry. Without that confidence, the public acceptance of mandatory superannuation will be weakened and people will be reluctant to invest in the economy more broadly.

Few stakeholders disagree with the fundamental purpose and value of the scheme. Establishing the CSLR was a key recommendation of the Review of the financial system external dispute resolution and complaints framework (Ramsay Review): see Ramsay, I.; Abramson, J.; Kirkland, A., Supplementary Final Report: Review of the financial system external dispute resolution and complaints framework (6 September 2017). The recommendation was endorsed in the Final Report of the Financial Services Royal

Commission: see [Final Report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry], Volume 1 (1 February 2019). These were recommendations accepted and enacted by governments from both sides of politics and supported by a wide range of industry stakeholders. There has been widespread recognition of the need for the CSLR. The years of evidence of its need should not be forgotten.

All stakeholders agree that the CSLR must be sustainable now and into the future. Most agree that Treasury's current review is critical to the future of the CSLR and must be carefully considered, widely consulted on and undertaken as a priority.

Peter's story

For Peter, not only has he lost almost all of his hard-earned retirement savings, he has also lost his faith in the financial system. "I don't know how we can all trust these super funds, because if this is happening to mine, who's to say it's not going to be happening to someone else's?" he asks.

Response to Treasury proposals

Proposal 1: Enabling CSLR to deduct payments from compensation

We support Proposal 1, which would allow the CSLR to deduct payments that claimants have already received from amounts that the CSLR pays out. We support this provided those amounts relate to the same relief and the amounts are determinable without delaying payment to the claimant.

Amounts that do not directly relate to the amounts claimed should not be deducted. For example, if a claimant is entitled to receive compensation from a financial firm for lost earnings, advice fees or SMSF establishment and maintenance costs, amounts received in respect of capital loss should not be deducted from what the CSLR pays out since those are not compensation for the same loss. However, if a claimant is awarded compensation for a capital loss and is also entitled to an amount arising from class litigation in relation to that same capital loss, that amount should be deductible from the amount the CSLR is required to pay out.

The CSLR should only deduct amounts where they are known at the time of payment. The CSLR should not delay payment while awaiting the outcome of class litigation or an insolvency proceeding. If the right to payment or the amount of the payment is unknown at the time of the claim, the CSLR should pay the claimant and seek repayment in subrogation as discussed below. As such, it is important that the right to deduct is aligned to the right of subrogation. This will avoid any incentive to delay payment of claims to people who are in desperate need of that money.

Recommendations

Recommendation 1: The CSLR should be given the power to deduct from payments to claimants amounts received or receivable by claimants in respect of the same losses provided they are determinable at the time of the claim (Proposal 1).

Proposal 2: Expanding CSLR subrogation rights

We support Proposal 2 to give the CSLR subrogated rights to collect any money paid to consumers by the CSLR. The Treasury paper notes that the CSLR has found its current subrogation rights too limiting to support meaningful recovery.

Subrogation is reasonable and necessary to ensure that the CSLR can pay claims to consumers then later recoup the money. This means consumers will not have to wait for payment while the CSLR attempts to identify the existence and likelihood of potential payments. If the CSLR has strong collection powers, it will be able to recoup any payments that may become owing at a later date due to circumstances outside the claimant's control.

In particular, the CSLR should be given the power to collect on the following payments owing to a member, where those payments form part of the claim the CSLR has paid out:

- Payments payable or claimable by a firm under its professional indemnity policy;
- Distributions made as part of an insolvency proceeding to a member's super fund and attributable to the claimant;
- Payments owing by solvent financial firms of any structure (sole trader, partnership, corporation etc);
- Payments owing to a member of a superannuation fund by the fund as a result of regulatory or class action litigation.

To facilitate the recovery of funds from professional indemnity insurance, a publicly accessible register or record should be established. A Professional Indemnity insurance register or record should include the insurer, policy period, coverage limits and inclusion of run-off cover. This would allow the consumer, CSLR and AFCA to identify what cover is available and pursue it before a claim reaches the CSLR. The register would support the scheme's sustainability as a last resort, which is undermined when recovery avenues are not identified in time.

Treasury should consider all relevant amendments required to give the CSLR the proposed powers, e.g. amendments to the SIS Act and Regulations, due to the protections super accounts have from creditors.

However, it is important that the CSLR be required to pass on any money recovered via subrogation to claimants, minus any CSLR payment made, and the costs of collecting on money via subrogation (e.g. litigation costs). Many CSLR claimants with losses from their super are forced to accept a substantial reduction in their retirement savings, and therefore quality of life in retirement, because they cannot afford to directly pursue a financial firm or wait years for a court proceeding to conclude. It would be manifestly unfair of the CSLR to retain additional amounts simply because it is in a position to take legal action, which the consumers whose rights it is subrogating are not.

Recommendations

Recommendation 2: The CSLR should be given broad powers of subrogation to assist it to collect on debts owed to claimants in respect of amounts paid out to those claimants (Proposal 2).

Recommendation 3: The CSLR should only be able to retain amounts paid out to claimants plus its reasonable costs of collection of those amounts and should be required to pay any amounts above that to the claimants to whom those amounts were originally owed by the financial firm.

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

We do not support Proposal 4 to change the AFCA counterfactual 'but for' test to adjust the amount of compensation available from the CSLR. This runs counter to long-established principles of compensation, and places a deeply unfair burden on consumers to accept lower compensation due to the high cost of misconduct.

The purpose of the CSLR is to protect people who have been victimised by financial firms from shouldering the full loss of the misconduct because the firm cannot or will not pay. It ensures that consumers do not fully bear the cost of misconduct. Reducing compensation to consumers undermines that purpose.

Treasury has also failed to make the case that sustainability is actually in question. The questions of sustainability seem to arise based on the amounts claimed against the CSLR being higher than originally modelled. They are also based on the complaints of self-interested lobby groups for the sectors who have caused harm.

True evidence of sustainability constraints would demonstrate that businesses are at risk of having to cease trading due to high levy costs, or that sectors who had done nothing wrong and benefited in no way from a compensation scheme were being asked to pay. There is no evidence of either of those things in the paper. Rather, there is evidence that under the revised caps financial advice clients may have to pay a maximum of $25.70 per year to fund the scheme. In the context of typical advice fees being measured in the thousands of dollars, $25 hardly seems a threat that would make the cost of advice unsustainable.

Other industry stakeholders have claimed that they have no relationship to the harm, so shouldn't be required to pay. Firstly, this is the nature of any insurance scheme, it spreads risk across a broad base to compensate for the loss of a few. Secondly, all participants benefit from a safe financial services system. One example of this benefit is measured in people having trust in the superannuation system as a whole. It should never be taken for granted that people are willingly giving up 12% of their income to be set aside for decades to provide retirement income. Mandatory savings schemes like this are rare globally and come with significant long term benefit to consumers, industry and government. There are numerous recent examples of people losing trust in institutions because those institutes have failed to improve people's economic outcomes. This loss of trust has led to radical political responses, which in turn have done further damage to these institutions and trust. Many people impacted by Shield and First Guardian have lost faith that institutions are there to protect them. This mistrust is likely to spread if compensation of last resort is also cut.

Compensation for counterfactual losses (but for)

It is a fundamental principle of compensation that a person who causes loss or harm should, so far as money can do so, put the injured person in the position they would have been in had the wrongful conduct not occurred. This is a principle of law which has existed for hundreds of years in the English common law system: see *Robinson v Harman* (1848) 1 Ex Rep 850.

There is no public policy reason for people making a claim due to the misconduct of a financial firm to be denied the right to fair compensation. Given how fundamental financial services can be to people's lives, and the information and power asymmetries between consumers and financial firms, consumers of financial services and products are entitled to a raft of strong protections. Proposal 4 would represent a dangerous departure from the well-established principles and guarantees of consumer protection laws.

Counterfactual losses, as they are referred to in the Consultation Paper, refer to amounts required to put a person back in the position they would have been in but for the misconduct of the financial firm. They are amounts that a person has not directly lost, but lost the opportunity to have, or amounts that the person would have to lose or expend to be returned to where they were prior. They can include earnings a person would have made ‘but for’ poor advice, but also amounts relating to lost insurance policies that cannot be replaced, and costs required to shut down an unwanted SMSF.

It is unclear whether the Consultation Paper proposes to limit all counterfactual losses, or simply limit lost investment earnings.

Criticisms of the well-established ‘but for’ test show no regard for fairness towards consumers who have suffered financial loss due to misconduct in the financial services sector.

We are aware of the industry view that the primarily wealthy victims of the Dixon collapse received a ‘windfall’ that they did not deserve, because many of those victims of misconduct did not lose the money they originally invested. Industry groups have called forgone returns hypothetical or speculative. However, courts assess this kind of future-looking loss regularly, including lost earnings, missed investment opportunity and future profits. This is a normal part of how compensation is calculated at law. This is not just some legal abstraction, this is based on what any just society would accept as reasonable.

A compensation scheme of last resort is designed to pay consumers what they were already found to be owed, not to recalculate the amount. A consumer’s loss does not decrease because the company that wronged them has become insolvent. Similar schemes overseas have set payment caps, but they do not use insolvency as a reason to recalculate what is owed. The CSLR was intended to operationalise unpaid AFCA determinations, not to create a second-tier, insolvency-discounted version of justice. To allow a legitimate claim to go uncompensated is to deny justice to the victim.

However, not all victims of financial collapses are wealthy. Indeed, the average capital loss of a Shield and First Guardian investor is $100,000 ($1.1 billion/11,000 = 100,000). Since many people invested their entire account in these two funds, their capital losses represent their entire retirement savings. If you are nearing retirement and have only $100,000 of super, you are far below the median super balance of $217,954 for men and $199,006 for women at age 65. Missing out on years of compounding interest that you would have earned but for inappropriate financial advice could be the difference between you being on track to maintain your standard of living in retirement, or facing severe financial hardship.

Treasury has requested feedback on proposals to limit compensation for counterfactual losses despite providing no clear picture of what the whole-of-scheme consequences will be. The only ‘modelling’ is on page 25 of the Consultation Paper, in the form of Table 2, which sets out a sample of fifteen AFCA determinations, and calculates the compensation that would be payable in those cases under each reform option.

It is not clear why this table was included in the Options Paper, given that, immediately underneath it, Treasury acknowledges that “The table does not, nor is it intended to give, a sense of estimated whole-of-scheme impact.” No detail is provided on how the sample determinations were selected, and there is nothing to suggest that they are in any way representative of the overall bank of claims.

The solution to ensuring the CSLR remains sustainable is not to cut back the amount of compensation claimants are currently getting. It is to strengthen the funding model, the recovery model and consumer protections. The Consultation Papers do all of those things. In particular, the package of reforms that Treasury has developed to protect consumers contains strong protections which will have the effect of greatly reducing the risk of future harm.. With those changes in place, there is no need to cut back on compensation.

If anything, work needs to be done to ensure the scheme continues to provide meaningful compensation long term. As already shown, the CSLR falls well short of compensating a typical person near retirement if they were to lose their super. The $150,000 CSLR cap is un-indexed, meaning over the coming decade it will likely lose about $45,000 in value since it was introduced.

Recommendations

Recommendation 4: The well-established counterfactual 'but for' test should continue to apply when calculating CSLR compensation. None of the alternatives in Proposal 4 should be adopted.

Proposal 5: Embedding greater certainty in the special levy framework

We agree that the CSLR should apportion costs to the sectors where poor consumer protections and/or actors were most responsible for the harm. Spreading the costs of compensation more broadly spreads the responsibility fairly across industries and sends a strong message to every responsible sector to improve their business practices and support effective consumer protections where they don't exist.

One of our observations from the industry response to Shield and First Guardian is that there is a much stronger desire to introduce more effective consumer protections to reduce the risk of harm. It is clear that the financial disincentives created by the CSLR is driving more constructive engagement from the sectors impacted. This was an intended outcome of the CSLR and is at risk of being diminished if industry is allowed to reduce its financial obligations to the scheme.

The success of the CSLR is measured by whether it effectively reduces risks to consumers. The responsibility for huge financial losses span the financial services sector, from financial advisers, to superannuation trustees.

Waterfall approach to special levies

We support Treasury's proposal to provide greater transparency and certainty over how special levies will be apportioned.

The principle of the proposed waterfall approach strikes a balance between widening the pool of contributions and allocating levies based on their connection to the losses incurred.

As noted in the consultation paper, allocation based on ASIC regulatory effort is problematic because ASIC chooses which issues or sectors to put its resources into, which may not reflect the likely related CSLR claims. ASIC also expends regulatory effort on activities for which no claim can be made to the CSLR for losses (but which nonetheless require regulation).

We agree with the proposal to identify tier subsectors via AFCA case work, and regulator and CSLR data.

However, we do have concerns about how Treasury will determine whether or not a subsector is connected to the claims that the CSLR estimates will be incurred. This is high stakes, as it will impact whether a subsector can be levied up to $40 million. These decisions are likely to be highly contested and are at risk of being subject to interference by industry. This could delay a special levy and therefore payment of compensation claims to consumers.

We recommend that Treasury provide as much certainty and transparency as possible around how it will determine an entity is connected in order to ensure that objections do not derail the collection process.

We also question the basis on which a $40 million sub-sector hard cap was reached. There is no evidence in the Treasury paper as to how it was derived. We can infer from the lobbying efforts of the various industry bodies that they wanted a hard cap in place to limit the liability on any one sector. Private lobbying is a poor basis on which to make public policy. These debates about capacity to pay should be transparent and evidence based.

As already highlighted, a $40 million sub-sector cap would translate to a $25 average annual increase in the cost of an active client receiving advice. Further the Treasury paper says, “To the extent levy costs are passed through to consumers, this would create a price signal that better reflects the risk profile and regulatory obligations associated with particular products or services.” A $25 cost increase on a service that costs thousands is unlikely to send any such signal. It is also at such a low level that passing on this cost to consumers wouldn’t appear to strongly impact capacity to pay for the advice sub-sector.

Depending on the details of any future claims on the CSLR, sub-sector caps may unduly inhibit the scheme's ability to apportion cost appropriately. There may be scenarios where better capitalised sub-sectors are able to afford more than the $40 million cap, or where only one sub-sector is responsible for the harm caused. Treasury should undertake proper public analysis of capacity to pay before settling on the $40m sub-sector cap.

Recommendations

Recommendation 5: Treasury should provide as much certainty and transparency as possible around how it will determine an entity is connected for the purposes of imposing a special levy (Proposal 5).

Recommendation 6: Treasury should undertake and publish analysis of capacity to pay and the appropriateness of a $40m sub-sector cap.

Contributions by self-managed super funds to special levies

Treasury has proposed to impose special levies on SMSFs where that newly created subsector is connected to the harm associated with the costs incurred. We support this proposal.

The more contributors to the CSLR, the lower the costs will be for any particular entity. Since costs will always be passed on to customers as part of the fees they are charged for the financial product or service, it is somewhat artificial to suggest that it is unfair to a financial entity who has to pay a levy when they have not done anything wrong. It is the customer - including where the customer is a victim - who ultimately pays the levy. Spreading the levy widely and thinly makes it easier for the customer to access the services they need without disproportionate fees.

Because super funds will be contributing under the waterfall model and those contributions will come from member administration fees, it is reasonable for SMSF members to also contribute. While it is true that only a portion of those SMSFs are advised and therefore have a cause to complain, it is equally true that only a small portion of people in APRA-regulated funds are advised and will ever have cause to claim against the CSLR. No unfairness arises in these circumstances.

It is also worth noting that the amounts that could be levied under this model are not significant, worst case scenario modelling undertaken below suggests an individual may only have to pay up to $33 a year (equal to $61 a year per SMSF). In the context of the annual ATO supervisory levy for SMSFs being $259, while the annual median audit fees are $550 (ATO), the CSLR levy amounts to a very modestly priced fraud insurance premium.

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

We do not support Proposal 6 to exclude or limit the scope of SMSFs in the CSLR. This approach contradicts the purpose of the CSLR, that is, to compensate people who have no other recourse.

Proposal 6 is also being made in the context of:

- a huge and growing number of people switching their super into SMSFs,
- the lack of clarity about whether SMSFs are covered by the hawking prohibition (see the joint consumer submission on ‘Curbing lead generation activity’), and
- the proposed stronger obligations for superannuation platforms that increases the risk that harmful behaviour will migrate to SMSFs instead (see [SCA submission on enhancing consumer protections]).

These factors combined mean that people in SMSFs would be much more vulnerable to total financial loss.

Excluding SMSFs from the CSLR

The Consultation Paper proposes to exclude coverage for SMSFs from the CLSR. We strongly oppose this.

The Consultation Paper states:

- 93.1% of all paid and pending CSLR cases relate to SMSFs, and
- 87.29% of financial advice-related misconduct cases to date involve the provision of investment advice to SMSFs.

These figures are likely to change significantly when Shield and First Guardian filter through the scheme given the higher proportion of people invested via APRA-regulated platforms rather than SMSFs. However, if SMSFs had been excluded to date 9 in 10 people would be turned away. This would make an extremely poor safety-net and pressure would be back on decision makers to fix this problem immediately.

Currently, only a small proportion of SMSFs are entitled to claim against the CSLR, that is, those that received financial advice in relation to their SMSF. According to the Class 2025 Annual Benchmark Report on SMSFs, consistently across FY22 to FY24 only 26.0% to 26.8% of the SMSFs were advised (source: Class 2025 Annual Benchmark Report prepared for the SMSF Association). While only a portion of the SMSFs are advised, many of those that are advised have moved into an SMSF on the advice of the adviser.

The Shield and First Guardian collapses have demonstrated that many people were switched into an SMSF so that the adviser could invest them in a particular investment. The SMSF structure was in many cases not appropriate for the consumer, who didn't appreciate the obligations of being a trustee or the rights and protections that they were giving up by moving into an SMSF. They were also charged significant fees for the advice, set up and ongoing maintenance (as much as $20,000).

The CSLR is the ONLY chance they have to claim for uncompensated losses from Shield and First Guardian. There is no hope of compensation from a platform. There is no hope of Part 23 SIS Act compensation. Eliminating the only hope that people harmed by financial firms have would leave many consumers incredibly vulnerable to poor financial advice. This is particularly so given the interactions with advice fees (outlined in [SCA submission on enhancing consumer protections]).

Cutting off people who have lost money through SMSFs may reduce CSLR costs, but it also totally undermines the fundamental purpose of the CSLR - that is, to be a last resort for people who have been harmed by financial firm misconduct. Because these people have nowhere else to turn, there is a stronger need to ensure they are protected by the CSLR.

SMSF opt-in and opt-out coverage

We also strongly oppose an opt-in or opt-out system to include SMSFs in the CSLR.

The cost-benefit ratio of this proposal appears to be very low. It also will deny some people access to the only compensation that might be available to them.

We presume that the ATO would be charged with management of any opting regime since it is the primary SMSF regulator and has access to the personal information required to administer it. Such a regime would require the ATO to:

- develop a new register which can accept lodgments of elections and allow users to check the status or result of those lodgements,
- design a form that explains the nature and consequences of the election,
- consult on the design of the system and form,
- identify a method for determining that the election has been made by the persons authorised to make the election,
- create a mechanism for someone to challenge the accuracy of the ATO's records as to whether or not an election has been filed,
- permit the CSLR to access information about the elections lodged when it receives a claim,
- communicate extensively with SMSF trustees about the changes and the impacts of the elections, including any deadlines by which an election must be received,
- engage with SMSF trustees relating to new elections on an ongoing basis, including complaints and queries.

The creation and maintenance of business registers, and in particular the extensive costs associated, have been the subject of much parliamentary scrutiny of Treasury, ASIC and the ATO. The Modernising Business Registers program was halted and reversed after a Treasury review found that it would take up to $2.8 billion to complete. The review report warned about the risks of large-scale IT projects blowing out budgets and creating long term complex problems that are difficult to unwind. It would be wise to revisit the learnings of this project before placing additional complexity on the ATO.

An opt-in regime would be expensive to implement - IT systems changes, project management, communications, customer service. According to ATO data from December 2025, there are 664,000 or so SMSFs who would have to be given the opportunity to opt in to the CSLR. Even if at a conservative estimate only 10-20% lodge an election, that is still 66,400-132,800 elections in the first year. There would also be ongoing staffing costs to maintain the register.

An opt-out scheme would, in effect, cover SMSFs as a default. This may protect more people, as opt-out defaults generally have a high level of take up in superannuation, for example MySuper products and default insurance. According to APRA's Quarterly Superannuation Industry Publication for December 2025, 63.6% of accounts in APRA-regulated superannuation funds are in MySuper products. Super Consumers Australia analysis of APRA's Annual Fund-Level Superannuation Statistics for June 2025 finds that 71% of the members with insurance had default cover (excludes insurance policies with fewer than 20 members). Although this data is unlikely to be directly translatable to the SMSF space, which by definition requires some level of engagement to switch into.

An opt out regime may create a larger pool of leviable entities (on the assumption that only a small number of people will opt-out) and reduce the levies paid by individual SMSFs. See table 1 below for an estimate of the levies that would be payable per-SMSF and per-member, assuming a special levy of $40 million on an SMSF subsector, under each model.

Table 1:

Scenario	Cost per SMSF	Cost per member
All SMSFs contribute	$61	$33
Opt out (80% contribute)	$77	$42
Opt in (20% contribute)	$306	$167

Assuming a $40 million special levy on the SMSF sector with 653,062 SMSFs and 1.2 million SMSF members (ATO Quarterly Statistical Report, June 2025, as quoted in Treasury Consultation Paper, Compensation Scheme of Last Resort: Reform options to support ongoing sustainability, page 41)

There is a risk with any opt-in model that a sufficient pool of members is not built and maintained to cover the proposed $40m sub-sector cap, plus administration costs. Costs will rise if members leave the scheme, and this can lead to a 'death spiral' as ever greater costs push more out.

Given the low cost-per-member of covering all SMSFs, it would be more efficient and fair to direct the significant budget for an opt-in or opt-out scheme to the CSLR directly.

Recommendations

Recommendation 7: All SMSFs should contribute to special levies where required and be covered by the CSLR. Proposal 6 should not be implemented.

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

Poor management and/or misconduct of managed investment schemes (MISs) has been a significant driver of losses to consumers in recent years, particularly in relation to Shield and First Guardian. It is appropriate that they continue to contribute to special levies to fund the CSLR.

In our view, Option 1 - a broad-based levy on all MISs referenced to assets under management - is the most appropriate method of calculation. This is consistent with how registrable superannuation entities are levied by ASIC under the industry funding model.

While risk-based levies - per Option 2 - may align the risk of loss with the costs associated with remediating those losses, they will only drive the right behaviour if they assess risk in a meaningful way.

APRA's Supervision Risk and Intensity Model has been developed and tested over time to assist APRA to monitor a range of risks. Implementing such a model for managed investment schemes could potentially drive MISs to improve their governance and operations, thereby reducing the risk of misconduct and subsequent losses for consumers.

However, such a model would require a new legislative reporting framework and an enormous amount of regulatory effort to implement.

We support Option 1 - levying all schemes based on assets under management.

Recommendations

Recommendation 8: All managed investment schemes should pay special levies to the CSLR calculated based on assets under management (Proposal 7, Option 1).

We support the CSLR being given every reasonable power to collect on amounts as part of the funding model of the CSLR, refusal to pay just debts (and active efforts to avoid payment through restructuring) should not be tolerated by the financial system.

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

We support the proposals to expand the ability of the CSLR to recover compensation from those responsible for the misconduct, including from related companies and directors.

Where a consumer obtains an AFCA determination for payment from a financial firm, the consumer becomes an unsecured creditor of the financial firm. When that financial firm becomes insolvent, there are rarely any assets left to pay unsecured creditors and AFCA complainants are left to claim against the CSLR.

Phoenixing, asset shifting or any other efforts by owners to shift money away from creditors or defeat their claims are distressing to the people who have suffered financial losses and significantly threaten the financial sustainability of the CSLR.

While we support efforts to deter or overcome asset shifting in principle, at this stage we are unclear what specific reforms are proposed in Proposal 8, Option 1. At a high level, we have observed that it appears to be easy for directors, officers and responsible managers to move from insolvent licensees to new licensees, leaving people suffering significant financial losses in their wake. We would support reforms which prevented people from taking on new director, officer or responsible roles where their insolvent firm engaged in systemic misconduct and AFCA determinations remain unpaid.

We also support Option 2, which would allow the CSLR to collect money owing to claimants from related parties who have received benefits from a financial firm.

The definition of ‘related’ entity must be constructed to ensure there are no loopholes which allow people who have caused losses to unfairly avoid liability.

This should include parent companies who have sold their interests in an entity within a reasonable period of the insolvency, particularly where the transaction resulted in additional debt being incurred by the entity (i.e. a leveraged transaction), or a loss or material change to professional indemnity insurance coverage or the loss of a guarantee of liabilities to the firm.

We would support amendments to section 127 of the ASIC Act to facilitate more efficient information sharing with AFCA and the CSLR, such as the power ASIC has to make unsolicited information releases to APRA under section 127(2A) of the ASIC Act.

We support the proposal to empower AFCA to join parties to a complaint (pre-determination).

Consumer advocates assist numerous people who wish to join parties to an AFCA complaint, and who would benefit from this reform. A typical consumer without legal assistance would struggle to identify the relevant related entities. It would be important for AFCA, as the pre-determination, implementing scheme, to be able to satisfy itself of the legal connection and join additional related entities to live complaints. Design of this pre-determination phase is critical to ensure AFCA can make a timely assessment based on easily available evidence.

If AFCA could join related entities to live disputes, claims could be diverted outside the scope of the CSLR. Extending liability to related entities at the AFCA stage would change the prospect of payment and potentially allow AFCA to progress more complaints and allow more consumers to access redress directly. This could significantly reduce the need for CSLR compensation, so is also a key sustainability measure.

This is also consistent with consumer advocates' position that scam victims should be able to join parties to a scam complaint at AFCA, and the recent expansion of AFCA's jurisdiction to include receiving banks in scams scenarios.

Recommendations

Recommendation 9: Expand the CSLR's powers to recover unpaid AFCA determinations within corporate groups (Proposal 8).

Recommendation 10: Amend section 127 of the Australian Securities and Investments Commission Act 2001 to facilitate more efficient information sharing with AFCA and the CSLR

Recommendation 11: Empower AFCA to assess and join related entities pre-determination, to divert claims away from the CSLR.