FINANCIAL ADVICE
ASSOCIATION
AUSTRALIA

29 August 2025

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

Via email: CSLR@treasury.gov.au (cc: CSLRreview@treasury.gov.au)

Dear Treasury,

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

The Financial Advice Association of Australia[1] (FAAA) welcomes the opportunity to make a submission to Treasury on the Compensation Scheme of Last Resort (CSLR): exceeding sub-sector levy caps.

Our members help Australians to build a better financial future. Financial advice delivers great benefits to those who are fortunate enough to have access to it. Financial advice delivers a plan for the future, a sense of confidence that delivers peace of mind and helps to guide financial behaviours to enhance the prospect for success and to avoid bad decisions. The significant financial consequences of the CSLR for the financial advice profession put this at risk for many Australians.

The financial advice profession is under pressure, having almost halved since 2019 to number only 15,364 at the end of the 2025 financial year – with further substantial losses expected in this financial year. It has also become highly fragmented: there are now 5,945 financial advice practices in Australia, with an average of only 2.6 advisers per practice, and the vast majority (over 96%) are privately (non-institutionally) owned. These small businesses have a very limited ability to absorb additional compliance costs. The cumulative impact of the CSLR levy on top of other government cost recovery action and mandatory fees and expenses, will also serve to further reduce adviser numbers and increase the cost of financial advice, putting it out of reach of more Australians.

This consultation is specifically in relation to the Minister's decision with respect to the treatment of a special levy for the 2025/26 financial year, for the $47.3 million above the financial advice sector cap. **We strongly submit that financial advisers should not be required to pay more than the $20 million sector cap. The excess should be fully allocated across a broad range of other sectors on the basis of capacity to pay.**

Whilst we welcome this consultation, there are much deeper issues that have been highlighted by the CSLR, that must still be addressed to prevent consumer harm and minimise the impact of the CSLR on the financial

[1] The Financial Advice Association of Australia (FAAA) is the largest association representing the financial advice profession in Australia, with over 10,700 members. It was formed in 2023 following the merger of the two leading financial planning/advice bodies in Australia – the Financial Planning Association (FPA) and the Association of Financial Advisers (AFA). With this merger, a united professional association that advocates for the interests of financial advisers and their clients across the country was created.

system and its consumers. We have previously made detailed submissions to both the Senate Economics References Committee Inquiry into Wealth Management Companies (on 1 November 2024) and to the Treasury CSLR Post Implementation Review (on 28 February 2025). We will not repeat our detailed analysis and recommendations provided in these earlier submissions, however we wish to emphasise that the problems with the CSLR are deep seated and will require comprehensive reform. Resolving what to do with the special levy, does not resolve the fundamental issues with the operation of the CSLR.

The scale of the issues uncovered in the Shield and First Guardian matters in particular, take the failures in the regulatory regime and the complications and challenges for the CSLR to an even graver level. It is deeply concerning that misconduct by a relatively small number of firms across a number of stages of the value chain can result in a huge level of detriment for many thousands of consumers, and it is likely to have a very substantial impact on the CSLR.

The other point to make about the Shield and First Guardian matters, is that despite failings already identified by ASIC by responsible entities, investment managers, research houses, superannuation funds, platforms, advice licensees, advisers and auditors, it is likely to be only the advice sector which will be held accountable by AFCA. This is a fundamental issue with the law, in that AFCA currently has no ability to attribute loss to other parties if a financial adviser is assessed to have provided inappropriate advice. Despite any failings by other parties and the capacity of those others to pay, AFCA will make a determination for the full amount of the loss and will likely hold the financial advice licensee/adviser entirely responsible. The Shield and First Guardian cases demonstrate the importance of fixing this issue. This is a highly unfair, inequitable and unsustainable element of the current law and practice.

If this aspect is not fixed, the full losses will flow through to a liability for the financial advice sector under the CSLR, as the scale of losses (estimated at $1.2 billion) are likely to sink all the advice businesses involved. At time of writing, four of the five advice licensees identified as having been involved in these failures are no longer operating, with ASIC continuing to investigate Interprac (a subsidiary of listed group Sequoia), which licensed three of the firms identified as having been involved.

The decision that is made with respect to the treatment of the amount in excess of the sector cap for 2025/26 is likely to create a precedent for the future. With a likely substantial greater cost for 2026/27 and beyond as a result of matters such as Dixon Advisory, United Global Capital (UGC), Brite Advisors and the likely consequences of the failures of Shield and First Guardian, **it is critical that the financial advice profession gains confidence from this process that they will not made to pay more than the $20 million sector cap in this or in future years.**

We would welcome the opportunity to discuss the matters raised in our submission further with Treasury. If you have any questions about our submission, please do not hesitate to contact either myself on (02) 9220 4500 or sarah.abood@faaa.au, or Phil Anderson, General Manager, Policy, Advocacy and Standards on phil.anderson@faaa.au.

Yours sincerely,

Sarah Abood

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

Effective date: 29/8/2029

Submitted to: Treasury

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Contributing to Fixing the CSLR

The Government legislated for the establishment of this scheme in 2023 on the basis of earlier consultation by Treasury that indicated that the cost of the scheme would be around $6.17 million per year for the financial advice profession. That has not turned out to be the case. For 2025/26 the total cost for the advice profession is estimated to be $67.3 million - more than 10 times the July 2021 projection.

In these circumstances, we believe that it is reasonable to challenge the following statement in paragraph 16:

> *The legislative framework does not contemplate the Commonwealth making a financial contribution to deal with an excess claims, fees and costs estimate. This option is not available under section 1069H.*

Whilst we acknowledge that Section 1069H does not include a specific provision for the Government to contribute to a CSLR special levy, neither does it explicitly state that the Government must not contribute. We believe that there are circumstances where it is appropriate under law for the Government to make a contribution. We have set this out in our response to Question 16.

High-level options under section 1069H

Principles for dealing with an estimated excess

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

- We agree that **repeatability** is an important consideration. It is evident that a special levy will be required for some years to come, and the expected treatment of any future special levies should be understood, and be capable of being planned for by businesses. This is a necessary outcome to give all stakeholders confidence and greater certainty about the future.

- Imposing a special levy on the basis of '**culpability'** at a sector level is particularly challenging.

  Firstly, this line of thinking seems to be based upon holding innocent businesses accountable for any of the misdeeds of their sector. In fact, the whole compensation system is already based upon those who do the right thing being held accountable and made to pay for those who do the wrong thing.

  This concept of collective punishment is fundamentally flawed. Suggestions that this approach will give an incentive to businesses to report wrongdoers ignores the fact that even when innocent parties are aware of the wrongdoing (which they generally are not), and report it, they still have no ability to stop it. Only ASIC has this power, and the sector has no control over which matters ASIC chooses to pursue, or when. Even when ASIC does choose to pursue matters, and is successful in having fines awarded against perpetrators, the sector pays for the enforcement (under the IFM) and the proceeds go to government, not to the consumers who have suffered loss.

  The moral hazard of this approach acts as a positive encouragement to bad behaviour, as businesses which actually do the wrong thing are not making any contribution towards client compensation.

Culpability is already being unfairly assigned under the CSLR. If there is a successful complaint against a financial adviser that involves a breach of the Best Interests Duty or the appropriate advice obligation, the full loss will be attributed to the financial adviser, no matter whether other financial services participants contributed to the loss.

For example, the conduct of the US Masters Residential Property Fund contributed to the losses of the Dixon Advisory clients, however the losses are treated as entirely financial advice failings, despite no financial adviser being sanctioned or banned in this matter. Ultimately, when Shield and First Guardian matters land with the CSLR, ASIC has noted that responsible entities, investment managers, research houses, platforms, super funds and auditors may all be considered to be participants who contributed to the consumer loss. However it is likely that only financial advisers will be held accountable under the existing apportionment regime. This approach is not only fundamentally unfair, it is extremely unwise. The current failure to assign proportionate liability is a positive encouragement to all other sectors to take increased risks, in the knowledge that their failings will be fully attributed to advice.

- **Efficiency** is an important consideration. Given the high cost of ASIC issuing levies ($1.5 million for four sectors in the actuaries revised 2025/26 estimate), it makes good sense that invoicing should be focussed on entities where the cost of invoicing is meaningfully less than the amount that is raised. Consideration should also be given to improving the efficiency of ASIC’s systems, in an effort to control these costs for both ASIC and CSLR levies and speed up the process in the interests of consumers accessing compensation in a reasonable timeframe.

- **Affordability** is another critical principle, given the likely scale of special levies in the future and the flow on consequences of expecting small business sectors to contribute a material amount to the CSLR. Businesses should not be levied if they do not have the capacity to pay – a particularly important consideration when we bear in mind that none of these businesses did anything to contribute to the losses suffered by consumers.

- **Practicality** should also be a consideration. For example, another objection to the approach of assigning culpability, is that there are significant practical barriers to the Minister needing to decide what sectors are at fault, each year. Generally there will be multiple matters involved in CSLR claims going over the cap. These can be complex with many parties involved – for example, ASIC has already named multiple potential failure points in the case of Shield and First Guardian as noted above. Without a court case to support the decision, how will the Minister ascertain culpability across multiple sectors, for multiple cases each year? Such an approach would surely be challenged leading to further delays for consumers in receiving compensation.

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

As noted above, we consider that culpability is an option that should be discarded . It is not a reasonable approach to address this issue given the inherent practical issues with the attribution of loss, unfairness and lack of repeatability.

3. Is ‘repeatability’ an important consideration?

Yes, repeatability is a critical consideration.

It is evident that we will have a number of years of substantial special levies that the Minister is going to need to decide on, given the scale of already known matters - including Dixon Advisory, UGC, Brite Advisors, Shield and First Guardian.

It is also important to have a level of predictability about the treatment of special levies. This is specifically the case with the financial advice profession, where the losses (through the likely liquidation of impacted licensees) will likely result in very large exposures that will extend for a number of years.

Such an unpredictable and large contingent liability also operates as a huge disincentive to join the financial advice profession. Less than 1,200 of the approximately 15,300 advisers who are currently on the Financial Adviser Register, started after 2018, demonstrating an already very low flow of new advisers. The impact of the CSLR will only make this even worse. It will also be a significant incentive for those who were considering retirement or exiting the profession to leave earlier than they may have otherwise planned to. That would have a very destructive impact on the profession and a consequential loss of access for those Australians who are looking for financial advice in the next few years.

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

We do not believe that consumers should have their claims delayed or reduced in order to deal with the overrun. This would have a very negative impact on the community trust in the scheme, and in the financial services sector more broadly. Making no decision or paying by instalment should not be an option when the scale of likely costs over the next few years is in the multiple hundreds of millions.

Charging the financial advice sector for the full amount of the 2025/26 special levy and setting a precedent to do this in future years would be catastrophic for the financial advice profession, and for the Australian community who need and benefit from financial advice.

The CSLR Actuaries' revised estimate for the 2025/26 financial year includes a figure of $122 million for remaining claims that will not be paid in the 2025/26 year (Table 8). This excludes anything for Brite Advisors, Shield and First Guardian. It also excludes the AFCA costs related to these cases. If at least $122 million was all charged to the financial advice profession in 2026/27, then this would work out as at least $8,000 per financial adviser. This could be much higher still, if AFCA are able to process some of the complaints for Brite Advisory, Shield and First Guardian in 2026/27. This would be on top of $4,400 for 2025/26, if the full special levy was charged to the financial advice profession. This is simply unsustainable and would substantially impact the very viability of the financial advice profession.

In the consultation paper on page 21, the section of the table for the "Financial advice sector" shows data related to licensees. However, with the exception of (fairly rare) salaried models, it is not licensees that ultimately pay the levy. The cost is passed on to the advisers who are licensed by the entity. Hence the data in this table is not indicative of the capacity of the sector to pay.

The key affordability factors are the number of advisers available to pay the levy, and the financial capacity of the firms they operate within to do so.

Number of advisers
The number of financial advisers peaked in 2019 at 28,914, and has steadily declined since then, to 15,364 at the end of the 2025 financial year (according to Wealth Data: https://wealthdata.com.au/) – a decline of 47%.

According to the most recent research available[1], around 10% of current advisers intend to leave the profession. With levels of new entrants per year recently stuck around 300-500, we estimate that the advice profession will decline by a net approximately 1,000 in the current financial year (there is also a deadline for advisers to meet either a qualifications or experience standard by 31 December 2025, which pushes exits higher).

If we estimate that there will be 14,400 advisers remaining by the end of the current financial year, just the CSLR sector cap of $20m will cost almost $1,400 per adviser.

[1] *2025 Australian Financial Advice Landscape, Adviser Ratings (August 2025)*

Advice business capacity
According to the same Financial Landscape report noted above, there are currently 5,945 financial advice practices in Australia (June 2025), down from the 6,161 practices in 2023. Privately-owned (i.e. non institutional) practices account for 96.2% of all practices, an overwhelming majority. There are an average of 2.6 advisers per practice. 49% of practices have profit margins of 20% or less. In single adviser practices, the average revenue per adviser is $607k. This has to cover all costs, including support staff. Practices have been reducing support staff, with numbers in administration and paraplanning roles declining by between 8% and 9%.

Regulatory costs represent a high proportion of the costs of giving advice. Excluding any normal business operation costs, regulatory costs to advisers include: licensee fees, Professional Indemnity (PI) insurance, the ASIC Industry Funding Levy, and of course the CSLR levy. In January 2025, Adviser Ratings estimated that the total of these fees currently ranges between $36,896 and $84,877 per adviser (quoted in Money Management at https://www.moneymanagement.com.au/news/financial-planning/should-advisers-detail-regulatory-fees-their-clients)

Another important factor to note, is that the already-high average cost of advice jumped last year dramatically, up by 18% to $4,668.

It seems clear from these numbers, that the advisers who are paying the levy are overwhelmingly working in small, privately owned businesses with very little capacity to absorb additional regulatory costs. While some of this cost is passed on to consumers through increased advice fees, and some covered by reducing staff, there are limits to how long this can continue. As costs continue to grow and adviser numbers fall, the actual cost per adviser increases rapidly and dramatically, further discouraging new entrants and increasing exits from the profession. Within only a few years, if unchecked, this could effectively end the profession of financial advice.

Where are advisers going?
Exiting the regulated professional advice sector, does not mean that advisers are leaving the financial sector altogether. The data suggests that many are moving to the wholesale or general advice sectors, where many consumer protection measures, including the CSLR, do not exist - and the costs and risks to operate are dramatically lower. Since the introduction of the professional standards reforms in 2019, there has been a noticeable market shift.

As indicated by ASIC Industry Funding Levy figures, in 2017-18 there were 1,511 wholesale-only AFSLs. This grew to 1,991 in 2023-24 -an increase of 32%. Over the same time period, general advice licensees increased from 1,014 to 1,122 – an increase of 11%.

It seems clear that the well-intentioned but single-minded focus on increasing regulations and consumer protections in the professional advice sector, has had the effect of driving large numbers out of the sector. As a result, fewer consumers have access to protections such as the CSLR. It cannot be the goal that the CSLR is made sustainable only through reducing – potentially to nothing – the number of consumers who have access to it, because professional financial advice as practiced today is no longer available.

The only viable option to retain consumer protections is to spread the special levy across multiple sectors, as many sectors as possible, excluding financial advice (which has already paid to the sector cap).

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

We would favour an allocation to the broadest possible range of sectors, on the basis of capacity to pay. This would minimise the potential impact on the viability of any one sector. If the levy is spread as broadly as possible it is likely to pose less risk of threatening the viability of any sector.

The sustainability and repeatability of the special levy model is fundamental to the availability of funds for the payment of compensation to consumers. We therefore suggest that these principles be prioritised, and efficiency considerations that impact the collection of the special levy be investigated and addressed as a separate issue.

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

We believe that our preferred option to spread the special levy across the broadest possible range of sectors on a capacity to pay basis is the most appropriate option and is repeatable.

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

We do not support the option of spreading compensation over time, as the expected scale of claims in coming years is so great that this will create a backlog for potentially decades to come, and only serve to exacerbate the issue to the detriment of consumers.

As noted above, the CSLR actuaries have identified an amount of $122m in known unpaid claims beyond the end of the 2025/26 year. It would take six years to work through this at the $20m sector cap limit, even if there were no additional complaints, which will most definitely not be the case.

We are particularly conscious of the very negative impact on consumers if their claim is delayed, particularly where this relates to the retirement savings of people who are already in retirement or who were planning to retire in the short term. The consequences of a delay in payment for them would likely be substantial.

There may be grounds to argue for delayed settlement in the case of complaints that are dependent on the payment of an uncertain distribution from a failed scheme, such as Global Capital Property Fund, Shield Master Fund or First Guardian, where it is difficult to determine the exact quantum of loss, because the return to investors remains unclear. We appreciate that such a solution would be very difficult for impacted consumers and might require an alternative option for these clients, such as a financial hardship model. It might be possible for the Government to fund this by making payments to impacted consumers on an interest free loan basis.

Should there be a delay until the distribution from Global Capital Property Fund is determined, then this could result in a reduction in the amount of the levy required for the 2025/26 year. However, the amount would depend upon the specific nature of the cases and the extent to which complaints against UGC relate to the Global Capital Property Fund and the sector they apply to.

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

Capturing a sub-sector connected to the underlying conduct

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

We have covered above in detail, our view that attributing a special levy to a sub-sector based on fault or culpability is unfair, impractical and unsustainable.

It is unfair because those paying the levy are not responsible for the misconduct, even if a business in their sector has failed – the concept of collective punishment is in itself, fundamentally flawed. Innocent businesses and individuals in the sector have no power to stop misconduct – they can, and do, report any misconduct they become aware of, but only ASIC has the power to act. We have also made the case that a large proportion of misconduct in the financial sector is unfairly attributed to advice, because when multiple parties are at fault, all responsibility for the loss is attributed to advice – no attempt is made to attribute losses proportionately based on the misconduct of the various parties involved.

It is impractical because each year, the Minister would be required to determine fault across a range of different matters, without a court case or other precedent for guidance. It would likely be challenged strongly by whichever sectors were selected each year to pay, and potentially result in substantial delays for consumers.

It is unsustainable, because the financial sector would not know from year to year whether and how much they will be called upon to pay. Unknown, but potentially large contingent liabilities, are extremely problematic to deal with for any business, but particularly so for small businesses, the model with dominates the financial advice sector. Uncertainty about this is already contributing to low new entrants and increasing exits in the financial advice sector, further reducing numbers that have already nearly halved in the last six years, and contributing to an increase in the cost of advice for consumers.

Thus we do not support the charging of losses to a sector on the basis of their sectors connection to consumer losses.

We do however strongly support the ability to charge a special levy to a specific **entity** that has contributed to losses that are paid by the CSLR. This would include cases where a parent company walks away from a subsidiary, such as a financial advice subsidiary, places it into administration/liquidation, transfers the assets to another entity in the group and leaves it to the CSLR to pick up the cost. The current design of the scheme does not permit imposing a levy on a parent company, however we will discuss this further in response to Question 16.

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

As set out above, we do not support this concept of allocating a special levy to a sector on the basis of connection to consumer loss. We imagine that we would only change our view about this if there was an entire sector that, as a whole, was intentionally, deliberately and openly operating in a manner to the detriment of consumers.

We strongly support charging a special levy to entities which have, within their group, a subsidiary responsible for the misconduct – as noted above this is further canvassed in Question 16.

Capturing ‘large’ entities

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

As stated above, we support the approach of imposing a special levy on a broad range of sectors on the basis of capacity to pay. We believe that this is consistent with the legislation, as it is likely to be the most sustainable and effective mechanism, and will minimise the risk of impacting the viability of smaller sectors.

Whilst we note the inclusion in Appendix A and B of the consultation paper, of measures around revenue and profit, we feel that there may be shortcomings in this data (as we have highlighted below). Revenue is reported in a range of different ways that could serve to advantage one sector whilst disadvantaging another sector. Profit is also quite variable, such as through one-off items and write-offs. Further, outside of the listed entities cohort, it is much less subject to the same careful oversight and scrutiny.

One option is to use entity value as a proxy for affordability. For listed companies, this is an easy exercise to determine through market capitalisation. Where a sector is not listed or largely not listed, then it may be necessary to consider other options to assess entity value. It is likely that research houses and economists have done work to assess the consolidated value of a variety of different sectors. Where a listed entity belonged to more than one sector, it would be necessary to assess the proportion of that listed entity value that was attributed to each sector that it belonged to.

A sector that will be much more difficult to assess the entity value of is the profit to member superannuation sector. Some form of special assessment would be necessary for this sector. The data on revenue and profit in Appendix A and B is surprisingly low for this sector, which we address below in response to Question 15.

An alternative approach worth considering, would be to allocate the special levy to each sector based upon their proportion of the total number of complaints that are received by AFCA in the prior year. This is a measure that would be likely to allocate the cost to the largest sectors with retail clients, solves the issue that in some sectors not all entities are required to be members of AFCA, and is data that is readily available.

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

As stated above, we believe that the special levy should be applied to as broad a group of sectors as possible, with an allocation on the basis of capacity to pay. We do not believe that it should be allocated to one specific sector or a small group of sectors. In terms of the ASIC IFM sub-sectors that are most suitable, we believe that this should be done on the basis of sector value or the cumulative entity value for that sector. As noted above, our second option is AFCA complaints.

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

As stated previously, it is our view that the special levy should be applied to a broad group of sectors, including those that have large entities. We do not suggest that it should be limited to those sectors with large entities, however the allocation should be on the basis of capacity to pay, and we have suggested that this could be assessed on the basis of sector/entity value, or perhaps representation in AFCA complaints data.

Spreading the costs across 'retail-facing' sub-sectors

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

As stated previously, we consider that the most appropriate option is to apply the special levy to as broad a group as possible. In our view this is the most effective option. We are very conscious that the regulations only enable the Minister to allocate the special levy to sectors where the firms are members of AFCA, which means that they are invariably going to be firms that are retail facing.

We believe that there are circumstances where it is warranted to allocate some of the cost to sectors that provide financial services to wholesale clients. This would include in circumstances where client loss has arisen with respect to clients who are treated as wholesale clients, however AFCA have assessed them, for one reason or another, to be retail clients. We are concerned about these determinations, as it serves to assign the consequences and cost of misconduct in one sector to another sector on what could be argued to be an arbitrary basis.

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

We recommend that the special levy should be applied to the broadest possible range of sectors. We understand the cost of administering the allocation, or the complexity and cost involved in the allocation of the levy to each sector, may impact the apparent viability of this approach. We note that the CSLR Actuaries revised estimate for the 2025/26 year, states that ASIC will charge $235,000 to administer a further levy for the securities dealer sector. If this was representative of the cost for each sector, then we would suggest that it would only make sense to incur this cost if the amount raised from each sector is materially above this figure.

This will be the first special levy period ASIC has been required to administer. It is likely that, as with all new systems, efficiencies will be identified and improved over time as the system needed to support the special levy model is bedded down. We suggest that considerations relating to the efficiencies of the administration and collection of the special levy be investigated and addressed as a separate issue to the design of the model. In order to control the costs to the CSLR, all efforts should be used to address efficiency considerations within a short-term timeframe. As this could also improve the administration of both the CSLR and ASIC levy, this should be conducted as a standalone issue and be funded by government, not the CSLR.

While ASIC administration efficiencies should be investigated and addressed in the short-term, the CSLR special levy model should be designed to ensure it is effective in supporting consumer compensation for the short, medium and long-term. The special levy model should focus on long-term sustainability based on improved ASIC administrative efficiencies.

It is our view that capacity to pay is very relevant and should be the predominant consideration. As stated above, we consider entity or sector value to be a suitable measure, with an alternative being AFCA complaint numbers. We have concluded that an even distribution is unreasonable and that revenue and profit are not reliable measures. We also argue that regulatory spend, as per the ASIC Funding Levy, is not a meaningful measure of capacity to pay.

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

We have some concerns about the accuracy of the data that has been included in Appendix A, with flow-on implications with the outcomes of this data, as presented in Appendix B. A number of these outcomes would suggest that this data is either wrong or the basis for allocation is flawed. In support of this statement, we offer the following feedback:

- On page 17, the data shows that there are 78 Superannuation trustees with an average revenue of $13.459 million and an aggregate revenue of $1.05 billion.

  There are two super funds in Australia with more than 2 million members. The average member balance is over $150k. Fees per member on an average balance of $150k are likely to be more than $750 per year. For a fund with 2 million members, and an average balance of $150k, this is likely to generate fees of at least $1.5 billion. We understand that this revenue number could relate to the trustee, rather than the fund as a whole, highlighting the likely flaw in this. More explanation of how the figures in the paper have been arrived at, would be valuable.

- Also on this page, the revenue attributed to Responsible Entities also appeared low at an average of $11.6 million.

- Custodians on the other hand, are listed here as having an average revenue of $700 million and aggregate revenue of $333 billion. For a stakeholder in the value chain, which generates a much lower fee per dollar of invested funds, this seems odd when compared to super funds and responsible entities.

- The table suggests that there are 70 Investor Directed Portfolio Service (IDPS) operators earning an average revenue of $5.327 billion and an aggregate revenue of $372 billion. This does not make sense in comparison with super funds, which are arguably much larger, or with respect to responsible entities.

- On page 19, we note that there are 2,978 insurance product distributors who are CSLR levy liable entities. Seemingly they have an average revenue of $58.5 million and an aggregate revenue of $174.1 billion. Some of these will be small financial advice licensees who are caught under this sector definition. The table also suggests that the insurance product distributors have an aggregate revenue that is materially greater and more than twice that of the insurance product providers. This seems a very high revenue number for insurance product distributors, for a sector where many would be small businesses such as small financial advice AFSL holders. It seems unusual that they could generate more revenue than the insurance product providers. It also does not match up with the cost recovery amount charged by ASIC to the insurance product provider subsector in 2023/24 of $11.255 million, compared to $0.842 million for insurance distributors. It seems inconsistent with the approach in the ASIC levy that charges the 102 insurance product providers a minimum levy of $20,000 plus $1.44 per $10,000 of revenue above the $5 million threshold based on the gross premium and net policy revenue of the entity. This model clearly indicates the size and capacity to pay of the insurance product provider sector.

- Claims handing and settling services providers are shown on page 19 as having an average revenue of $161.5 million and an aggregate revenue of $53.1 billion. This seems like a very high level of revenue for this sector. We also think it is appropriate to point out a material inconsistency in the playing field in this space. Lawyers are specifically exempt from holding an AFSL to provide claims handling and settling services (Section 911A(2)(en) of the Corporations Act), yet many of them specialise in this area and generate substantial fees from it – extraordinary fees, if the numbers in this table incorporate them and are correct. Why are they exempt from being licensed to operate in this space, which makes them exempt from being members of AFCA and therefore exempt from contributing to any CSLR special levy? This seems to be particularly unfair to other providers of these services.

- Finally, it is not obvious to us how the research houses will be captured by the CSLR special levy, despite the role that they can play in client losses.

As we have questions about the accuracy of the revenue and profit data, we do not believe that they are appropriate measures to undertake an allocation to sector level.

We would be more confident with using the revenue measure if this data could be explained in more detail giving confidence in it accurately reflecting the differences between the sectors.

As stated above, our preferred metric would be sector and entity value based information including share market value for listed firms and a proxy of market value for other firms. We have also suggested AFCA complaints data as an alternative measure.

Options outside the current legislative framework

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

In our previous submissions to the Senate Economics References Committee Inquiry into Wealth Management Companies and the Treasury Post Implementation Review of the CSLR, we set out an extensive list of recommendations to address the evident flaws in the design of the CSLR. In response to this question, we will limit our response to matters that are largely related to the determination of a special levy.

Attribution of Loss

It is important to start with the issue of apportionment of loss, given that the CSLR has highlighted that losses that arise as a result of failings in other parts of the value chain will be, wherever possible, attributed to the financial advice sector. The law evidently, under the principles of the attribution of loss in the proportionate liability statutes, means that where a complaint can be linked to a breach of the core advice obligations (Best Interests Duty and Appropriate Advice obligation), even if there are material failings by other parties, the full loss will be attributed to financial advice and determinations from AFCA will reflect this. The underlying meaning of this is that despite the evident failings related to Shield and First Guardian by responsible entities, investment managers, super funds, research house and auditors, the full loss will be attributed to financial advisers, if the client can demonstrate that they received poor advice. This External Dispute Resolution (EDR) approach is also reflected in determinations of past product failings over the decades. The existence and narrow scope of the CSLR at present continues to provide a very strong incentive to blame financial advisers for any loss, as advice losses may be compensated through AFCA and the CSLR without court action.

The inequity of this legal factor needs to be urgently fixed. Financial advisers should only be held responsible for the proportion of the loss that relates to their misconduct. That should be a fundamental principle of this overall EDR and CSLR regime. Given that the other parts of the value chain in the Shield and First Guardian matters are already covered under the AFCA regime, they should cover the cost through the submission of complaints to AFCA. However, if these firms fail, then it would not be possible for the clients to recover this part of the loss as they are sectors that are not currently covered by the CSLR. That is an additional matter that the Government should also address, however this should not be a deterrent for fixing the fundamental issue of fair and equitable apportionment of loss in the consumer compensation regime.

Special Levy on a Specific Entity for Phoenixing or Large Scale Misconduct

Another area of law change that we would like to see, is an ability to charge a special levy to a specific entity that is a party to misconduct, however has managed to side-step that liability through actions such as phoenixing.

A recent case is that of E&P Financial Group, which over many years, extracted hundreds of millions of dollars in fees from the US Masters Residential Property Fund (URF). Yet when client complaints started to flow into Dixon Advisory as a result of the loss in value of the URF, E&P Financial Group put Dixon Advisory into voluntary administration, moved the advisers and clients to another advice entity in the group (Evans and Partners), and then passed on a $300 million plus liability to others in the financial services sector.

Not one single director, executive or financial adviser from E&P Financial Group has been successfully prosecuted as a result of this matter, and E&P Financial Group is continuing to operate, whilst retaining – by its own admission – 80% of these clients. A particularly perverse outcome of the current structuring of the CSLR, is that E&P Financial Group will benefit directly from the compensation paid by the CSLR to its clients, as it will receive and invest those funds, earning fees on compensation paid to its clients by innocent parties as a result of its misbehaviour. This is fundamentally wrong.

It should be possible under the law, subject to sensible restraints, for the Minister to impose a special levy on a specific entity. There have been more cases of phoenixing, for example Sequoia's placing of advice subsidiary Libertas into administration, and its moving of clients and advisers to Interprac. There is nothing to stop this occurring again, for example with respect to Shield and First Guardian. In these cases of pheonixing, we have observed advisers and clients transferred to a separate advice entity within the group without any payment for these assets, and intercompany loans written off. There has been a complete failure of effective action against these entities.

Another option to address this issue would be to allow AFCA to join parent entities to complaints through a change in the AFCA rules. This would allow better accountability for the conduct of subsidiaries without the need for extensive changes to insolvency laws.

Calculation of Loss

Through our submission to the Treasury CSLR Post Implementation Review, we made the recommendation that the CSLR should operate as a scheme of genuinely 'Last Resort'. To this end, we suggested that the scheme should be limited to the compensation of capital losses, rather than the current 'but-for' losses that compensate for investment returns foregone.

Whilst we accept that a 'but-for' calculation is reasonable in the context of reimbursing a client loss that has been suffered as a result of misconduct or a mistake by an ongoing financial firm that is paying the compensation, we do not think it is appropriate in the context of a scheme of 'Last Resort' where compensation is being paid by innocent parties. The CSLR scheme has shared that around 80% of compensation payments to Dixon Advisory clients so far, were 'but for' losses, i.e. amounts paid to clients who had not suffered a capital loss. This is a fair amendment that could be made to the scheme that would likely reduce the cost of operating the scheme.

Treatment of Frozen Funds

One important issue that has emerged as part of the collapse of UGC (and the Global Capital Property Fund (GCPF)), and Shield and First Guardian, is that client money is left frozen in an investment option/entity, whilst a liquidator is appointed to wind up the fund/entity and distribute the remaining value to impacted clients. Some of these assets cannot be quickly liquidated. This is certainly the case in terms of property developments and loans to entities that do not have the obligation or capacity to repay in a timely manner. Seeking to immediately liquidate the investments, may have a detrimental impact on the amount that can ultimately be recovered. This makes it difficult for AFCA to accurately assess the loss. In the case of GCPF, it appears that AFCA have taken the view that there will be little return on this investment, and used that to assess the scale of the loss. That is most likely not going to be the most accurate position, as in this case there is a material amount of cash left in this investment entity.

Naturally clients want access to their funds in a timely manner. This is particularly critical in the context of those in pension phase who are reliant upon this money for living expenses. In our view, it is important to facilitate a sensible balance between providing relief and providing a reasonable assessment of the loss. We do not want the CSLR to be paying out more than is ultimately necessary and then needing to seek recovery from the client. This will be complex and costly.

We believe that an alternative solution may be necessary to address matters like this. Potentially this could include an interest-free Government loan scheme as an interim arrangement for these clients.

Government Contribution

The consultation paper suggests that the law does not prescribe a means for the Government to contribute to the cost of a special levy. However, we believe that it is nevertheless appropriate for the Government to consider how it can contribute to supporting consumers.

We believe that there are sensible opportunities for the Government to contribute to the cost of the scheme and to reduce the scale of future special levies by funding the following:

- The government could operate a fund to pursue recoveries from failed firms and their directors/executives – similar in concept to the Fair Entitlements Guarantee scheme (FEG).

  Historically, including with some of the failures mentioned above, we have too often observed no effective action being taken against firms (including their directors and executives) that have been put into liquidation, despite there appearing to be conduct that was designed to deprive creditors of the full value of the assets of the entity. The very existence of the CSLR is a disincentive for such action to be taken, as consumers can recover up to $150,000 without the costs and risks of taking court action.

  The CSLR operator's actuaries revised estimate for the 2025/26 year includes an estimate of just $34,000 in recoveries. This is a disturbingly low number in the face of apparent misconduct undertaken by these entities to avoid payments to creditors. We propose that the Government fund a body to pursue recovery of money from firms where claims have been made against the CSLR. The establishment of such a fund, and the active pursuit of such entities, will not only serve as a deterrent to people seeking to undertake this insolvency related misconduct, it will also be important to all stakeholders to know that people are not going to be allowed to get away with this misconduct - that every effort will be undertaken to ensure that those responsible will be pursued to the limits of their resources before innocent parties are asked to pay compensation. This is an essential reform. It is necessary that the Government funds this, as the CSLR has insufficient rights of subrogation, as well as a strong disincentive to pursue these matters, which involve risk, when needed funds can be raised risk-free from innocent advisers. For any matter where the amount of the recovery exceeded the cost of pursuit of the case, this money would be transferred to the CSLR and would have the effect of reducing future levies required.

- Government should temporarily fund the CSLR to provide monies for consumer claims in years where the receipt of levies is delayed. This year, it is evident that the CSLR will soon run out of money, due to a delay in the issue of invoices for the standard levies and due to an inevitable delay in the issue of a special levy. This is disadvantageous to claimants and damaging to the reputation of the scheme. The Government should provide an interest free loan to the scheme at the start of the year to cover the cost of claims until the levies have been received.