FINANCIAL ADVICE ASSOCIATION AUSTRALIA

22 May 2026

The Treasury

Email: Superannuation@treasury.gov.au

Dear Treasury,

Consultation – Enhancing member protections in the superannuation system

The Financial Advice Association of Australia[1] (FAAA) welcomes the opportunity to provide feedback to Treasury on the *Enhancing member protections in the superannuation system* Consultation paper.

The FAAA believes that it is critical to assess what happened with the collapse of Shield and First Guardian and to consider what sensible changes to the regulatory regime will provide greater protection for consumers, without unnecessarily adding to the cost and complexity of providing advice and supporting clients in their superannuation journey.

We believe that it is critical to set out some principles under which these reforms should seek to operate. They are as follows:

- The reforms that emerge as a result of the Shield and First Guardian collapses should directly focus on specific forms of misconduct. They should not apply general additional obligations across all participants that make doing business more difficult and costly for consumers, superfunds and professional advisers.
- Reforms should address current gaps, by making it easier for consumers to pursue claims against a broader range of perpetrators of harm. It should be as easy for consumers to pursue a complaint against a MIS or super fund as it is against a financial adviser, and where there is broad culpability, it should be possible to apportion responsibility and for that shared responsibility to have applicability in the workings of the CSLR. This has the added benefit of reducing moral hazard by ensuring that it is primarily the perpetrators of financial misconduct who bear the cost of compensation. This means that AFCA Rule C1.5 must be removed.

[1] The Financial Advice Association of Australia (FAAA) is the largest association representing the financial advice profession in Australia, with over 10,000 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.

Other potential opportunities for reform

It is the view of the FAAA that this consultation excludes some additional options that ought to be investigated, including the following:

- Better enabling clients to make complaints against parties who have contributed to misconduct (in particular, super funds and MISs) through removing AFCA Rule C1.5, thus allowing complaints against the management of a fund or scheme as a whole. We note the discussion in Proposal 5 about requiring platform trustees to compensate members for eligible losses, however we are suggesting a different mechanism.
- Addressing the current inability for AFCA (and presumably the courts) to apportion client loss to other parties where there has been a breach of the core financial advice laws.
- The development of an early warning system to better detect misconduct in the early stages. In the case of Shield and Fist Guardian, information existed in the financial services industry that would have indicated that there were unusual patterns of behaviour that should have been investigated. This information sat with the super funds and with the advice licensees. It is essential that we look at how information is collected, shared and analysed to enable more targeted and timely intervention.
- Further consideration of the role that research houses play in the rating of investment options and inclusion on super fund investment menus and advice licensee approved product lists. This research and rating process must be robust.
- The actions that ASIC have taken against the financial advice licensees involved in the Shield and First Guardian collapses have highlighted the fact that their supervision and monitoring of their financial advisers was inadequate. The standards around financial adviser oversight should be enhanced and more clearly articulated.

FAAA Recommendations

The FAAA has five key recommendations:

- **Additional obligations to apply broadly.** We recommend that any additional obligations that emerge from this process should apply to all APRA-regulated superannuation funds and not just platform funds.
- **Increased superannuation governance obligations.** We support the recommendation to increase the governance obligations that apply to super funds, particularly with respect to the inclusion of investment options on investment menus.
- **No increased waiting periods.** The FAAA strongly recommends that the Government does not proceed with the idea of an extended waiting period prior to switching superannuation.
- **No ban on advice fees for super switching.** The FAAA strongly recommends that the Government does not proceed with the idea of a ban on advice fees being paid from super accounts for super switching advice.

- **Improved member compensation from super funds.** We recommend that this issue be resolved by the removal of AFCA Rule C1.5 and legislating to enable the apportionment of liability where multiple parties have contributed to the client loss.

FAAA Feedback

We have responded to each of the consultation questions below.

Part 1: Strengthening platform governance

It is very evident from everything that has been reported about the broader issues with the Shield and First Guardian collapses, that these funds were put on the super fund investment menus without adequate due diligence. There also appears to have been a failure of ongoing due diligence and enforcement. We therefore consider that it is appropriate to consider enhancements to the super fund governance model.

Proposal 1: Strengthening governance requirements for Platform Trustees

1. How should a "Platform RSE" and a "Platform Trustee" be defined?

We do not see a benefit in defining a "platform" for the purposes of these reforms. It is our view that any additional obligations or standards that are introduced, should apply to all APRA regulated super funds and all super trustees. Whilst it might be assumed that the retail funds predominantly demonstrate the attributes of a platform, it is also the case that some of the largest profit to member funds have similar investment functionality.

Where the funds that might be captured by this definition are doing things that create greater risk, then the obligations that apply to them should require additional actions. This should apply to all APRA funds, no matter how they might be defined.

2. Is the term pre-mixed trustee-directed product appropriate for capturing the non-platform and non-member directed subcategory of Choice products?

We are not convinced that creating this term has any meaningful benefit. We suggest that the way that the PDSs with which the Shield and First Guardian funds were first launched might comply with such a definition. We are hesitant about a complex definition being used to decide if additional obligations apply or not.

3. Would mandatory holding limits be an effective safeguard to promote diversification and reduce overconcentration risk for platform members?

We support the idea of funds having mandatory holding limits on individual investments, based on the trustee's judgement of the level of risk that investment might pose to a member. Typically, higher holding

limits would be applied to diversified investments vs those that are high risk / highly concentrated. It has been alleged that at least one of the impacted super fund trustees had holding limits, however they failed to enforce these limits.

Typically, MySuper investment options are very well diversified, and are likely to include not only a variety of asset classes, but also a variety of investment managers. In these cases, the diversification is achieved within the product and a holding limit of 100% would seem appropriate. For other investment options, diversification needs to be achieved by spreading the investment across multiple investment options, and lower holding limits would be appropriate.

It is common for Target Market Determinations to give consideration to holding limits, particularly for options that lack diversification or are high risk. At a minimum, what is addressed in the TMD should be enforced by the trustee, however the trustee may wish to go further and reduce such holding limits.

It is our view that holding limits do not need to be set in the law or any other form of regulation, however trustees should be required to operate on the principle of setting and enforcing holding limits.

4. What characteristics of investment options should be considering when setting holding limits?

The type of characteristics that we would consider important in setting holding limits include:

- The level of diversification in the fund, including across asset classes, individual holdings, and whether there is any diversification achieved by the use of multiple investment managers.
- The level of experience of the investment manager/s.
- The extent of capital that the RE has.
- The extent to which the fund invests in illiquid, unlisted and alternative assets and / or can utilise gearing.
- What the TMD says about the risks of the fund and the expected level of holdings.

5. Should codified due diligence obligations be introduced?

The FAAA believes that this obligation should be codified, however it would not be necessary to do this in the law and instead it could be done by APRA prudential standards or even industry standards.

6. What minimum elements should be specified as part of a codified due diligence obligation?

We believe that all that needs to be codified is the requirement for trustees to operate a holding limit system, where they have the ability to set the limits and are expected to enforce them. Further details could be included in guidance and APRA could periodically monitor trustee adherence.

7. Are platform-specific restrictions needed to address conflicted payments or benefits that are linked to product listing, preferred placement, continued availability, or member flows?

7.1 If so, which types of payments or arrangements pose the greatest risk of undermining a Platform Trustee's independence?

The Corporations Act already has a section (964A) that stipulates that a "Platform operator must not accept volume-based shelf-space fees". However, platforms can take flat fees from investment managers for making options available on platforms. These fees are disclosed in PDSs and include things like "inclusion of products on the menus and for administrative activities we undertake for the product issuers or managers", for management of "rebate agreements from certain fund managers for rebate administration services", ongoing fees for "investment options for funds under management flow reporting", and fees "from providers of term deposits and fixed term annuities" and ongoing fees "from the managers of managed models available through [a Managed Account Service]". Whilst these fees appear to be relatively modest, they could amount to a substantial amount of money for a platform with thousands of investment options.

It would be expected that these fees would largely cover costs and should not be of a scale to incentivise the platform operator to act in a way that was inconsistent with the interests of the members of the fund.

Nonetheless, we should investigate why the Shield and First Guardian funds were added to the investment menus of super funds when they initially lacked scale, investment performance history, adequate research ratings and investment manager capability. There must have been some other reason. It is possible that expectations of future inflows to these products played a role. Another factor may have been intentions to support existing important licensee/adviser clients.

We are not aware of the practice of "preferred placement" of investment options on investment menus that is referenced in the consultation paper. However in our view the selection of investment options should be made by members and their advisers and not be subject to other inappropriate influences.

8. How can restrictions be designed to stop harmful incentives without restricting legitimate operational arrangements?

Definitive information is needed with respect to the decisions to include Shield and First Guardian on the investment menus of these super funds, to respond to how this could be enhanced. We would expect that in the future, on the basis of their experiences with Shield and First Guardian including the financial and reputational damage sustained, trustees will ask more questions, will investigate claims and challenge business models in a manner to help avoid a repeat of these collapses.

9. What features of an outsourced model may reduce governance effectiveness?

In our view, the issue of outsourced trustee models is more complicated than some may suggest. In the case of Managed Investment Schemes (MISs), some are arguing that the Responsible Entity and the investment manager roles should be separate legal entities, with the RE having responsibility for the oversight of the investment manager. To extend this, it could be argued that there is a potential benefit in the separate role that the outsourced super fund trustee plays, relative to the platform promoter, provided they are adequately resourced to play this oversight role.

The obligations of platform promoters are also relevant and should be considered in this context.

10. What are the characteristics that could be reflected when differentiating between varying trustee business models, to ensure governance obligations are appropriately calibrated to Platform Trustee environments?

Any trustee that is taking on the role of trustee, whether in their own capacity or on an outsourced basis, needs to ensure that they have the resources and the skills to do the role. They also need to carefully consider the level of complexity that they accept in order to ensure that they can effectively manage the risks that exist within the fund. They need to carefully review the actions of the platform promoters and the administrators to ensure that they are acting in the best interests of members. Those which fail to do these things effectively must be identified and appropriately sanctioned by the relevant regulator/s.

11. What would the impact be of banning the trustee for hire model?

This option may serve to limit competition in the marketplace, making it difficult for new funds to emerge when they lack scale to build their own trustee business. We do not believe that a case has been made that adequately justifies this action.

Increase penalties under the SIS Act

12. Should SIS Act penalties increase to better match comparable penalties in the Corporations Act 2001?

We support the proposal for better alignment of the penalties under the SIS Act and the Corporations Act, however we acknowledge that increasing penalties alone is unlikely to have a material impact on reducing the occurrence of misconduct and client detriment that has been observed with respect to Shield and First Guardian. Importantly, this failure was also at the MIS level and that will not be impacted by increasing the penalties under the SIS Act.

13. Would higher maximum SIS Act penalties incentivise better Trustee governance?

Higher penalties would be one factor that trustees would need to take into account in designing their governance model. It would be one of the factors, amongst many others, that would influence the design of trustee governance models.

Part 2: Superannuation switching

Proposal 3: Introduce a waiting period for inter-fund superannuation switching

The FAAA does not support a waiting period model for inter-fund superannuation switching. We do not believe that this is necessary. When it comes to financial advice, the process is already reasonably long as a result of the fact-find exercise that needs to be undertaken, and often the need to contact product providers to obtain additional information. The development of the strategies and the preparation of a Statement of Advice also takes a reasonable period of time. Clients are carefully stepped through the process, and educated on the key considerations along the way. They typically have plenty of time to consider the appropriateness of the decision that they need to make. They need to provide informed consent for the advice to commence to the point of implementation and action.

Placing further delays and steps in this process will not be helpful for clients. We have not seen evidence that a longer waiting period would have changed consumers' decisions to switch funds in the Shield and First Guardian matters at the time of their decision to switch. Changes of this nature should not make financial advice and product implementation more difficult. The reforms should address specific areas of misconduct.

We are aware of some cases where the client fact find was completed by the lead generator and the adviser did not even talk to the client before the Statement of Advice was presented. This is clearly already in breach of the law. We don't however feel that in the context of high pressure sales tactics, that a waiting period, would make any meaningful difference in avoiding exposure to such situations.

Waiting period

14. What length of waiting period would ensure consumers have time to reflect on information before they make a decision?

The FAAA does not support a waiting period. We do not feel that this is necessary for the vast bulk of clients who go through the financial advice process, who have sufficient time to reflect upon the information they have in front of them and have confidence in the advice that they receive.

There may be value in collecting data on what the actual time taken to process switches currently is. Our members have suggested that the time taken to process these switches in reality is already substantially longer than the current standard of three days.

15. Should members switching superannuation funds be required to reconfirm their choice following a waiting period?

The FAAA does not believe that this measure is necessary for the vast bulk of clients who have made the decision to switch their super through the advice process. Requiring them to reconfirm their decision following a waiting period is simply an obstruction in the process that they have not asked for and will not want.

When looked at in isolation this is the exact opposite of process improvement. It would be a deliberate effort to make processes less efficient and more costly. There is no evidence that this would have changed outcomes for consumers in the Shield / First Guardian matter.

16. Would a waiting period have any negative impacts on consumers?

Yes, a waiting period would have negative impacts in that it would delay the switch that they are seeking, potentially leave them out of the market for a longer period, and put them at risk of being disadvantaged by market movements. This step will also involve additional costs for the super funds and advisers that will increase the cost of these products/services without any apparent benefit for consumers.

17. How long after the waiting period should a rollover request lapse?

We do not support a waiting period or a need for reconfirmation.

18. What challenges may funds face in implementing a waiting period, and how could these challenges be mitigated?

This proposal would add more steps to the process and require additional effort and cost. It would also increase the risk that a mistake could be made. This could lead to more complaints about a failure in this process.

19. Should restrictions apply on communications between a financial adviser and the member after the onset of the waiting period?

This is a totally inappropriate suggestion. There is no good reason to prevent a financial adviser from communicating with their client, either in normal circumstances or even in the potential case where a reform of this nature was implemented. This suggestion only serves to highlight that this proposal is contrary to the expectations of clients and the interests of delivering good customer service. If there was some problem with this transfer process and the adviser needed to contact the client, then they should be able to do so.

20. Should consideration be given to a mandatory waiting period applied between the provision of super switching related financial advice and the acceptance of such advice?

The FAAA does not think that this is necessary. Under the Financial Advisers Code of Ethics, they are required to obtain informed client consent before implementing the advice. This therefore puts the timeframe in the hands of the client. The advice provided cannot be implemented until the client has signed the authority to proceed. An adviser acting without this consent is breaking existing laws. Some clients will, for their own reasons, want to move quickly, and should not be prevented from doing so.

Coverage

21. Should a waiting period apply to all switches, or to a prescribed subset?

A waiting period should not apply to any switches.

22. How should 'higher-risk product' be defined?

The FAAA does not support a waiting period for any type of product.

23. Are there exemptions which should be considered so as not to unduly restrict member choice?

The FAAA does not support a waiting period, and we do not support reforms that would result in the creation of an unlevel playing field.

Warnings / Notifications

The FAAA believes that there may be merit in a standard notification from a regulator to those who are intending to establish or join an SMSF, to ensure that they understand the additional obligations and risks that flow from operating an SMSF. This is as a result of the very different attributes that apply to SMSFs and the protections that are being given up as a result of leaving the APRA-regulated system. This could perhaps be supplemented by completion of an on-line training module to ensure that prospective SMSF trustees and members do genuinely understand the implications of what they are doing. The cost of development and maintenance of such training could be funded by a levy on all SMSFs.

We do not believe that anything similar is necessary for APRA regulated funds, no matter whether they are a platform fund or any other type of APRA regulated fund.

24. What content should be included in notifications to consumers:

24.1 Switching to a platform RSE?

24.2 Switching to an SMSF?

As stated above, we do not feel that this is necessary for a platform fund. In terms of the message to an SMSF, it would need to address the additional obligations that apply to trustees (and members) of SMSFs, the protections that they are giving up and the additional risks that they are taking.

25. Are regulators or member's current funds more appropriate to provide these warnings?

It is our view that this warning should come from a regulator so that it has a more official nature and so that warnings are consistent.

Implementation

26. Would implementation of this proposal result in significant compliance costs for trustees?

We will leave this question to the super trustees to respond to, however it would be our expectation that there would be a significant additional cost in running such a compliance regime.

Visibility of fund flows

27. In addition to a waiting period to slow down the super switching process, increased regulator visibility of switching could also work to ensure members are better protected from potential harm. Would there be benefit from requiring receiving funds to collect and provide information on flows into higher-risk products?

Rather than 'in addition to waiting periods', instead we would propose the development of an early warning system to capture fund flows that could highlight an increased risk. This could include abnormal flows into higher-risk products. It could also include unusually large flows for a specific financial adviser or group of financial advisers. We believe that there is merit in investigating the potential for the establishment of an early warning system and an additional data collection system to enable increased monitoring of warning signs. In our view, this could be assisted by the use of AI that could help to bring together interconnected pieces of information that paint an overall picture of elevated risk.

International experience

28. What are the potential benefits and harms of imposing conditions on the types of asset classes that schemes may invest in when offered to retail clients? How might the market impacts of such a restriction in an Australian context differ to the experience of alternative jurisdictions?

As the FAAA set out in our February 2026 response to the consultation *Enhancing oversight and governance of managed investment schemes*, we believe that there is merit in setting higher hurdles for MISs to achieve before being made available to retail investors. Such measures will likely reduce retail investor exposure to higher-risk funds. The potential disadvantage for Australian investors is that this could reduce their access to these types of funds. That is probably only going to be seen as a negative by those who are seeking much higher levels of risk.

We would not expect that the impact of such higher hurdles would be different in Australia to other jurisdictions.

29. Should certain schemes remain accessible to retail investors without restriction, while others require additional conditions or oversight?

We do believe that there is merit in an approach where certain very high-risk schemes are not available to retail investors in Australia and other higher risk options are subject to additional conditions or further oversight.

30. What transition issues would MISs face if retail access to certain asset classes were restricted under an amended MIS framework, such as under the UK's frameworks?

If such a reform were to be introduced, then most likely it would need to apply to new investments and not capture existing investors. Whilst it would be appropriate to warn existing investors, it would not be fair to force them to sell, although it is necessary to consider the likely consequences for a fund that is closed off to new investors and is likely to be exposed to higher demand for withdrawals. This would need to be carefully monitored with some mechanism to intervene if necessary and to allow for an orderly winddown with plenty of notice to the scheme's investors and operators.

Care would need to be taken to not strongly incentivise operators to move to wholesale or sophisticated only investor models. There is a danger this would drive many more consumers into a sector with extremely limited protections. Some estimates suggest that by 2041, 43.6% of Australians could 'qualify' to be considered wholesale or sophisticated if the current settings remain unchanged, and the potential for much greater consumer harm in this sector must be carefully considered. We have advocated many times for these settings to be reviewed and updated, and we strongly renew that call here.

Proposal 4: Limit fee deductions for switching-related financial advice

The FAAA strongly opposes any ban or limitation on advice fees being paid from super accounts for switching advice. There is no basis for such an intervention in the market, and this would only serve to disadvantage many Australians who have sought financial advice or who would seek advice if they could afford it. Forcing Australians to pay the fee for the advice out of their bank account would be particularly unfair for those who would be unable to afford it, and would severely restrict access to professional advice on important matters such as the best super fund for a consumer to consolidate into.

This would also have potentially have the unintended effect of substantially reducing competitive pressure on large incumbent super funds to improve their services, fees and performance. This would be unequivocally negative both for those members and the broader financial services sector.

31. Would prohibiting fee deductions for switching related advice meaningfully reduce harmful or inappropriate switching and improve member outcomes?

It would substantially reduce all forms of switching, and thus would be a very poorly targeted reform. We suggest there is strong reason to believe that the harms of depriving consumers of the benefits of financial advice on such a critical asset, and the impact of vastly reduced competition in such a large sector of the economy, would well and truly outweigh the advantages of any additional inappropriate switching prevented. The inappropriate switching behaviour in the Shield and First Guardian matter was clearly already against the law and multiple regulator actions are in train related to this. There are other more appropriate solutions to reduce the risk of inappropriate switching.

In looking at this, we need to consider the reasons for super switching, the vast majority of which is clearly legitimate and in the best interests of clients. A client may seek to consolidate their existing super funds to rationalise fees. A client at the point of retirement, may seek to transfer from one super fund to a pension fund, or to put money into an annuity. These are genuine reasons for seeking advice that should not be prevented, or involve a situation where the client needed to find money from other sources that they did not readily have.

We also suspect that those intent on doing the wrong thing will find ways to get around this, for example potentially charging higher ongoing fees or seeking remuneration in another form that is not in the interest of the client.

32. Under Proposal 4, which option (or combination of options) would best reduce inappropriate switching while still allowing appropriate access to advice?

The FAAA strongly opposes any ban or limitation on the payment of advice fees for super switching. There are no suitable alternatives that have been put forward. A ban on the payment of advice fees from super accounts on switching into platform funds would simply be a distortion of the market and provide a substantial competitive advantage to the other types of funds. There is no merit to restrictions based upon

new members of receiving funds or on the basis of age or balance thresholds. These proposals lack justification and would have a substantially detrimental impact upon consumers as well as on both the superannuation and advice markets.

33. Should restrictions also be placed on advice fee deductions from SMSFs?

Whilst we recognise that there are additional risks in switching to an SMSF, we do not believe that there is any justification for banning advice fees for SMSF switching advice. We have suggested elsewhere in this paper, additional warnings and education for operators and members of SMSFs that in our view would be substantially more effective at preventing consumer harm. It would also be practically challenging to enforce this restriction across almost 700,000 SMSFs – almost 75% of which do not currently receive advice in any case.

34. What would be the impact on members' ability to exercise choice and access financial advice?

Banning financial advice fees being paid from super accounts on super switching would significantly undermine choice and access to advice. It would mean that more clients would be forced to stay in their current fund(s), no matter whether it was inefficient for them or if it was not suitable for their needs. If financial advice related to switching funds was no longer able to be paid for from super accounts, this would have very substantial negative impacts for members of 'profit to member' as well as platform funds, most of which currently offer advice services for members, with switching advice fees able to be charged to the member's individual account.

35. If advice fee deduction restrictions were based on a member's total superannuation balance or age, what thresholds would be appropriate?

We do not believe that there should be a ban or restriction on financial advice fees being paid from super accounts, no matter where the funds are being transferred or whatever the member's circumstances. Both the financial adviser and the fund already have obligations to ensure such fees are appropriate.

36. What existing barriers prevent funds from conducting stronger checks before allowing advice-fee deductions?

APRA and ASIC jointly wrote to super fund trustees in April 2019 and June 2021 setting out their expectations with respect to the 'Oversight of fees charged to members' superannuation accounts'. These letters explained the importance of the sole purpose test and what they described as a need for proactive reviews of a sample of Statements of Advice (SOAs) and/or related documents to evidence the provision of services.

Despite this expectation having very serious privacy implications, in that trustees could obtain information on the advised clients that was inappropriate to share with the trustees, this has become normal practice with most funds now.

We do not believe that there are any existing barriers to prevent trustees undertaking strong checks before approving advice fees, other than (potentially) the Privacy Act, and administrative costs to the trustees.

37. How would this proposal interact with a waiting period for switching-related advice?

The combined effect of these proposals would have a substantially detrimental impact on consumers, increasing the cost of both superannuation and advice and reducing access to advice. They would also be anti-competitive, meaning that there would be much less movement between funds. Together they would create a greater mess and major distortion of the market.

Part 3: Compensation for members

The FAAA supports stronger and clearer obligations on superannuation funds to compensate clients when their actions have contributed to client losses. This is particularly the case where super funds have chosen to place investment options on their investment menu without adequate due diligence, and where funds have kept them on the menu when they should have been reviewed and removed. The current compensation regime shields super funds from this obligation through AFCA Rule C1.5 that excludes complaints about the management of a fund or scheme as a whole, and the inability of AFCA to apportion liability. It is important that these issues are fixed.

Other mechanisms exist for the compensation of clients, such as Operational Risk Financial Reserves and Part 23 of the SIS Act, however the use of these pathways seems to be unclear and in the case of Part 23 is subject to uncertain approval by Government.

Proposal 5: Requiring platform trustees to compensate members for eligible losses

The case for reform on the bottom of page 48 of the consultation paper is exactly correct. These four key areas for improvement include both greater clarity for consumers, but also recognise the two key asks of the FAAA, which are the removal of AFCA Rules C1.5 (although not directly referenced) and the ability for the apportionment of liability with respect to matters where multiple entities have contributed to the financial loss, and there is also a breach of a core financial advice obligation. In the absence of these reforms, financial advisers will continue to be held responsible for all losses, no matter the scale of contribution by others. This is critical to fix and it does not just relate to unpaid claims that go to the CSLR. It also relates to matters addressed by AFCA.

AFCA release data on complaints on a monthly basis that includes information on the number, progress and outcome of complaints. This data can be split between different sectors and is available at the financial firm level. The data for the first nine months of the 2025/26 year for MISs, super funds and financial advisers tells the story about how easy it is to complain against financial firms in these sectors and the outcome of these complaints.

Sector	Complaints received	Resolved in favour of complainant	Resolved in favour of financial firm	Discontinued	Outside AFCA rules
Managed Investment Schemes	551	3	6	54	307
Super funds	5,941	54	187	1,143	313
Financial Advisers	2,057	148	11	96	62

Source: AFCA monthly data: July 2025-March 2026

The extent to which cases are decided in favour of the financial firm or treated as outside of the AFCA rules is noticeably different for MISs and super funds as opposed to financial advisers. This data highlights the lack of a level playing field and the fact that the AFCA rules operate against the interests of consumers who have invested in MISs and Super funds. Fixing this should be a priority for all parties advocating in favour of consumers.

We note that ASIC has intervened in the case of superannuation fund compensation related to the Shield and First Guardian matters and have already had success with respect to Macquarie and Netwealth, which have both compensated consumers outside of the AFCA regime. Actions remain outstanding with respect to Equity Trustees and Diversa. ASIC's intervention is clearly another pathway for action, although it might not occur in all cases.

Contrary to what has been proposed in this consultation paper, we believe that the primary solution is to remove AFCA Rule C1.5 and modify the law to allow courts and AFCA to apportion liability for client loss, even where there has been a breach of a core financial advice obligation. It is our view that these changes will largely address the gap that exists and allow existing processes to apply. This would avoid the need to build a new system for these complaints and significant legislative change.

We further argue that the obligation to compensate members for a breach of the obligations of the trustee should not just be limited to platform trustees. There is no case for some APRA regulated funds to be held to lower standards than others. The removal of AFCA Rule C1.5 would ensure that this obligation applied to all super funds.

38. Do you consider exiting pathways for members to seek redress for financial losses are overly complex and not fit for purpose?

As stated above we do believe that the existing pathways are overly complex and not fit for purpose. The experience with the Shield and First Guardian matters and the table above on key statistics for AFCA complaints demonstrates this. It is extremely difficult for members to make successful complaints about super funds (or MISs), even when they have compelling grounds.

39. Should the requirement to compensate members from trustee capital be pre or post funded?

We are proposing a more straightforward solution to this problem, however we recognise that capital or another form of funding needs to exist to make these payments, or be capable of being obtained in a relatively short period. We would hope that claims on the scale of Shield and First Guardian are not repeated, at least not any time soon.

In terms of the question of pre or post funded, we suggest that this is best answered by the super funds, however we note the existence of ORFRs and the fact that requiring super funds to be overcapitalised in the case of the unlikely potential for a major claim, might not be the best outcome for members.

40. If a pre-funded requirement were adopted, should it be principles-based (adequate capital to fund compensation) or prescriptive (a minimum amount, for example linked to funds under management or another exposure measure)?

In our view, if this was an outcome of this consultation, then we would suggest that it should be principles based to take into account the circumstances of the specific fund, including the level of risk they are taking.

41. What criteria and evidentiary threshold should apply to determine that a loss is attributable to external fraud or theft and therefore an "eligible loss"?

In our view, given that we prefer another solution to this problem, we feel that this criteria is far too narrow. Why should it just be limited to external fraud and theft? Why is internal fraud excluded? What about other forms of negligence that do not directly involve fraud or theft?

42. Which independent body would you consider to be most appropriate for determining that an eligible loss event has occurred?

We believe that this issue can be fixed by the removal of AFCA Rule C1.5 and enabling the apportionment of loss where multiple parties contributed to the client loss. We do not believe that it is necessary to appoint or establish a new body to serve this purpose. There are obvious complications with using any of the existing agencies/entities in this space such as ASIC, APRA, AFCA or the CSLR. If it was a new body, then this would involve additional costs that someone would need to pay for.

43. How should this new mechanism work alongside existing compensation pathways such as trustee remediation, ORFR, AFCA/CSLR and Part 23 assistance?

The FAAA does not support this proposal. We believe that modification to the rules for existing channels is a better solution. This includes the removal of AFCA Rule C1.5, enabling the apportionment of loss where multiple parties contributed to the client loss, greater clarity on the use of ORFRs and more

certainty on the application of Part 23 of the SIS Act. Adding a new pathway seems like it would only create greater uncertainty and confusion.

44. How should compensation be determined?

If this model was to proceed then we would suggest that compensation should be determined on the same basis as it would if it was to be assessed by AFCA at an individual client level.

45. What changes should be made to existing redress mechanisms if this proposal is implemented?

As stated above, the FAAA does not support this proposal. We believe that modification to the rules for existing channels is a better solution. This includes the removal of AFCA Rule C1.5, enabling the apportionment of loss where multiple parties contributed to the client loss, greater clarity on the use of ORFRs and more certainty on the application of Part 23 of the SIS Act.

46. Would providing ASIC with a power to direct trustees to commence remediation processes provide an effective avenue to redress to members?

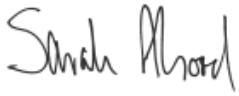
The Shield and First Guardian experience has demonstrated that ASIC can play an important role in ensuring that members are appropriately remediated. This has worked well with respect to two of the four trustees. In these cases, it has been the courts that have been the vehicle to achieve this. An alternative option would be for ASIC to have the power to direct trustees to commence remediation processes, however we imagine that funds will have access to the courts to resist this, and experience tells us that this is a likely outcome, at least in some cases.

Conclusion

The FAAA welcomes the opportunity to provide feedback on enhancing member protections in the superannuation system. It is our view that this paper contains some positive proposals that could assist in reducing the risk of further major fund collapses, however it also includes other proposals that lack merit and would actually be disadvantageous to consumers. We do not support waiting periods, banning or limiting the payment of advice fees from super accounts for super switching and the establishment of a new pathway for the payment of compensation by super funds, rather than fixing the current pathways.

If you have any questions about our submission, please do not hesitate to contact me on (02) 9220 4500 or sarah.abood@faaa.au.

Yours sincerely,



Sarah Abood
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Financial Advice Association Australia (FAAA)