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

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

Dear Director

### **Compensation Scheme of Last Resort: Proposal Paper**

CPA Australia represents the diverse interests of more than 168,000 members, working in over 100 countries and regions supported by 19 offices around the world. We make this submission on behalf of our members and in the broader public interest.

CPA Australia acknowledges and supports the government's overarching purpose to establish a financial services compensation scheme of last resort (CSLR) to support confidence in the financial system's dispute resolution framework. However, we do not support the design of the proposed scheme.

As drafted, we are concerned that the CSLR may not be accessed purely as a last resort, which is a major shift from the Royal Commission's intent.

Further, we question why the scheme exempts some industry participants, such as product providers, when improving the trust and confidence of the sector should be a shared responsibility.

CPA Australia recommends that the government amends the draft legislation to ensure that the proposed scheme can only be used as a last resort, that it applies to all financial service industry participants, and that levies are appropriately calculated.

Our detailed responses are contained in the Attachment.

If you have any queries about this submission, please contact Keddie Waller, Head of Public Practice and SME on 0401 716 083 or [keddie.waller@cpaaustralia.com.au](mailto:keddie.waller@cpaaustralia.com.au).

Yours sincerely



Dr Gary Pflugrath  
Executive General Manager, Policy and Advocacy  
CPA Australia

## Compensation Scheme of Last Resort: Proposal Paper

### 1. Introduction

CPA Australia acknowledges the government's overarching purpose in establishing a financial services CSLR to support confidence in the financial system's dispute resolution framework.

However, the Financial Services Royal Commission recommended the establishment of a compensation scheme of last resort to compensate consumers once all other avenues had been exhausted. We are concerned that as drafted the scheme may not be used purely as a last result, which is a major and unwarranted departure from the Royal Commission's intent.

In its response to recommendation 7.1 of the Royal Commission, the government committed to establishing an industry funded, forward-looking CSLR for consumers and small business complaints, designing the CSLR consistently with the recommendations of the Ramsay Review and extending the scheme beyond personal advice failures.

CPA Australia supports the notion that responsibility for consumer losses and complaints should be shared evenly across the sector. However, the proposed scheme does not reflect this shared responsibility, by excluding key industry participants such as product manufacturers. We believe this is a significant flaw in the proposed scheme, given that manufacturers whose products are poorly designed and improperly fail won't have to contribute to the compensation scheme.

We are also concerned that while the Federal Government has made a commitment to reducing red tape to cut the cost of doing business, the proposed scheme will arguably add significant cost and complexity, which seems to be at odds with this commitment.

Many financial advisers are sole traders or small businesses who simply cannot afford the continuing rising costs associated with increased complex regulation. The proposed scheme risks making financial advice less affordable and accessible in an environment where the impacts of COVID and Australia's ageing population mean that the need for advice continues to grow.

**CPA Australia recommends that the draft legislation is amended to ensure that the proposed scheme can only be used as a last resort, that it applies to all financial services industry participants and that levies are appropriately calculated.**

A contributing factor to the need for the CSLR is the failure of Professional Indemnity Insurance (PII) to respond appropriately to disputes, often leading to awarded decisions by AFCA remaining unpaid.

Accessibility and affordability of PII for the retail personal advice sector has been a challenge for many years, with the impact of the Financial Services Royal Commission resulting in some PII providers exiting the market. The contracting nature of available cover and associated risk premiums has resulted in many Australian Financial Services (AFS) licensees increasing their excess or accepting exclusions in cover to secure PII on an ongoing basis. It is also not uncommon for the approval process to take three to six months.

To ensure adequate consumer protection and the viability of a true CSLR, AFS licensees must be able to access affordable cover that is adequate for the nature of the licensee's business and its potential liability for compensation claims.

**CPA Australia recommends that Treasury undertake a government funded thematic review of PII for the retail personal advice sector, focusing on keys risks including:**

- **accessibility**
- **adequacy**
- **exclusions, and**
- **impact on capital adequacy.**

Another important factor to ensure the viability of a true CSLR is that all AFS licensees must continue to hold appropriate PII cover. It is our understanding that ASIC only assesses if PII cover is appropriate for an AFS licensee at time of application or as part of a surveillance activity. In contrast, registered tax agents and BAS agents are required to provide details of their PII policy at time of application and must demonstrate at renewal of their registrations that they continue to hold appropriate PII that meets the requirements of the Tax Practitioners Board.

**CPA Australia recommends that ASIC requires AFS licensees to demonstrate, on an annual basis, that they continue to hold appropriate PII that meets their obligations under the Corporations Act.**

This could be through requiring the submission of their PII cover when lodging their FS 70 and FS 71 forms.

While ASIC may not have the resources to review each policy for compliance, samples of relevant sectors could be reviewed to identify compliance or any emerging risks that may need early intervention within the sector.

## **2. Scope**

The financial products and services covered by the CSLR are proposed to be defined by reference to the financial product or service that a firm is licenced to provide through an Australian financial service licence (AFSL) or an Australian credit licence (ACL). A stated benefit of adopting this model is that this will reduce the cost and time to establish the CSLR.

We question how adopting this model will achieve a reduction in costs when the indicative establishment costs are estimated to be \$6.3 million?

CPA Australia believes that confidence and trust in the financial services sector is a shared responsibility and this shared responsibility should underpin the scope of the proposed CSLR. However, as drafted, the scope is limited to personal financial advice failures and will not extend to include financial product or credit manufacturers.

We believe this is a significant flaw in the proposed scheme, given manufacturers whose products are poorly designed and improperly fail won't have to contribute to the compensation scheme. Consumers, particularly direct investors and SMSFs, should also have a right to be protected and have recourse where losses are incurred due to misconduct, misrepresentation or fraud by a product issuer or manufacturer.

**CPA Australia recommends that proposed scope is amended to include financial product and credit manufacturers, ensuring both an equitable approach to funding the CSLR and the pursuit of a common objective by all participants in the sector to lift consumer trust and confidence across advice and products.**

Amending the draft scope to include all participants will also help ensure viability of the CSLR, reducing the need to periodically include or exclude certain financial products or services.

## **3. Paying claims**

CPA Australia supports the CSLR operator providing a clear and consistent CSLR claim process to ensure claimants are informed of the necessary steps to receive compensation.

However, we are concerned that the proposal for the CSLR to pay AFCA's outstanding expenses in addition to the unpaid compensation claims creates a conflict of interest for AFCA and jeopardises the CSLR becoming a true CSLR.

While we acknowledge that it is expected that AFCA undertakes reasonable steps to ensure an AFCA member pays the compensation owed, it is unclear how this conflict of interest will be addressed or mitigated by AFCA.

It is also unclear what mechanisms or due diligence obligations will be implemented to ensure that AFCA pursues all available avenues for the compensation to be paid before confirming to the CSLR the awarded amount remains unpaid and is therefore eligible to be paid under the CSLR.

**To address this risk and to support the viability of the scheme, CPA Australia recommends that the draft payment of claims is amended to remove the payment of AFCA unpaid expenses connected to awarded compensation under the CSLR.**

CPA Australia supports the obligation that the CSLR operator must notify ASIC of the relevant financial firm's failure to pay the amount under the AFCA determination, the intention being that ASIC can then use its power to suspend or cancel the financial firm's licence.

It is imperative that ASIC then acts quickly to limit any further potential unpaid claims if the relevant financial firm is still providing advice or services. Based on past experience, ASIC's investigation and review process can take a considerable period of

time. Full transparency of ASIC's process will be required to manage community and industry expectations. Service level agreements should also be put in place and committed to by ASIC to ensure matters are dealt with in a timely manner.

#### 4. Funding the scheme

The paper states that the levy framework is based on the government commitment that the CSLR would be funded by industry. We refer to our earlier comments that product manufacturers have been excluded from the scope of the scheme. They should be included to ensure both the viability and equity of the CCSR.

The draft legislation establishes a CSLR operator as a subsidiary of AFCA, however it is proposed ASIC will be required to administer invoices and payments. This adds unnecessary red tape and is likely to significantly increase the governments administration costs of the financial advice sector with little benefit to consumers. This is reflected in the proposed annual administrative costs of an estimated \$3.7 million.

When combined with the initial \$6.3 million estimated to establish the CSLR, the proposed model seems to provide premium funding, which will ultimately be paid by consumers and small business who seek financial advice. This will only further impact the accessibility and affordability of advice.

Noting that ASIC fees for financial advisers have increased by more than 230 per cent over the past three years, what assurances can be provided to the sector and recipients of advice that administration costs will be commensurate with the role of administrator?

**CPA Australia recommends that the estimated initial establishment costs and ongoing administration costs are reviewed to ensure that they are commensurate with the tasks being undertaken. Further, the CSLR and ASIC should publish its costings annually to ensure transparency and accountability.**

The total number of financial advisers has fallen below 20,000 and while it is proposed that the levy will only initially apply to AFS licensees with at least four financial advisers, we anticipate the proposed scheme will further reduce adviser numbers due to the increase in associated costs. This will effectively increase the cost per financial adviser and inevitably result in AFS licensees with three or even fewer financial advisers paying the levy.

We are also concerned that the proposed timing of invoices and payment deadlines generally aligns with the dates that invoices are issued to ASIC participants under the Industry Funding Model (IFM). As an example, an AFS licensee with four financial advisers will likely receive an invoice under the ASIC IFM for at least \$14,700 in 2022. When combined with at least an additional \$2,000 levy under the CSLR, these costs will have a significant impact on the cash flow of AFS licensees who are sole traders or small businesses.

CPA Australia also has significant concerns that special levies may be collected for increased AFCA fees and administration costs.

To ensure the viability of the scheme, AFCA fees should be excluded from the CSLR and mechanisms must be implemented to ensure administration costs remain commensurate with the tasks being undertaken.

#### 5. Governance

CPA Australia has concerns with the proposed governance model of the CSLR.

As drafted, we are concerned that the Minister has broad powers over the operation and actions of the CSLR which require careful consideration given the potential impact of any determinations, such as the payment of special levies.

We are concerned that the Minister will also be responsible for determining the scope of reviews of the CSLR, , potentially impacting the independence of such reviews.

CPA Australia is also concerned that the CSLR Co is proposed to be a subsidiary of AFCA Limited. It is unclear how potential conflicts of interest this structure may create will be addressed. Moreover, it is unclear what benefits this structure would provide.

There are also questions around the conflicts created by the fact that ASIC is both the regulator and potentially has influence over the CSLR. As well, there are questions around the potential costs that the sector may incur from ASIC undertaking this role under the ASIC IFM.

**CPA Australia recommends that the proposed governance arrangements for the CSLR be reviewed to ensure there is appropriate independence, and the minimisation of conflicts of interest, in the governance and operation of the CSLR.**

## **6. Implementation**

While it is important that there is transparency in the timeline for the implementation of the CSLR, the most important objective in establishing the CSLR must be ensuring the scope and design of the CSLR is fit for purpose and sustainable.

## **7. Other Matters**

CPA Australia supports the proposed integrity measures, such as ASIC having the power to suspend or cancel an AFS licence for unpaid AFCA determinations. However, it is imperative that ASIC acts in a timely manner in such circumstances to limit the potential for further unpaid claims.