29 May 2026

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Dear Sir/Madam

Compensation Scheme of Last Resort: Reform options to support ongoing sustainability

The Stockbrokers and Investment Advisers Association (SIAA) is the professional body for the stockbroking and investment advice industry. Our members are Market Participants and wealth management firms that provide securities and investment advice, execution services and equity capital-raising for Australian investors, both retail and wholesale, and for businesses. Practitioner Members are suitably qualified professionals who are employed in the securities and derivatives industry.

SIAA members represent the full range of advice providers from full-service and online brokers to execution-only participants and provide wealth advice and portfolio management services.

Our member firms are members of the Australian Financial Complaints Authority (AFCA) and subject to the Compensation Scheme of Last Resort (CSLR) and the CSLR levies.

The history of the stockbroking profession in Australia can be found here.

Thank you for the opportunity to provide feedback to the consultation paper on reform options to support the ongoing sustainability of the CSLR (Consultation Paper).

Executive summary

Expanding CSLSR subrogation rights

- The scheme should have expanded subrogation rights to pursue recoveries from a broader set of sources, including from a financial firm's professional indemnity insurer and the liquidator of the funds in which the complainant has invested. This would enable the CSLR to pursue subrogation rights against the liquidator of the Shield and First Guardian funds, for example.

Limiting compensation to capital losses only

- Compensation should be limited to capital losses only and 'but for' losses should be excluded. The scheme must respond to actual losses rather than guarantee an investment return for investors.

Special levy waterfall

- While SIAA supports the concept of a rules-based special levy waterfall to ensure scheme levies are more sustainable and to address the unfairness of the scheme's design, the proposal does not address the key issue– managed investment schemes, which are the key cause of complainant losses, are not currently included in the levy framework as a primary sub-sector.
- Levies on the personal financial advice sub-sector must be limited to $20 million. The personal financial advice sub-sector must be excluded from the special levy to ensure the sustainability of the sector.

Excluding SMSFs from claiming from the CSLR

- SMSFs must not be prevented from recovering losses under the scheme. Claimants should not be excluded from the CSLR based on how they hold their investments.
- AFCA's operating rules must be amended to ensure that it does not accept complaints from clients that have been classified by the relevant licensee as wholesale (including SMSFs that that are determined as wholesale based on the general test).
- The relevant section of the Corporations Act must be amended to ensure it is consistent with ASIC's no action letter regarding the treatment of SMSFs as wholesale.

Levying Managed Investment Schemes

- Managed investment schemes must be included as a primary sub-sector with their own sub-sector cap and a broad-based levy applied consistently across all management investment schemes.

Background

SIAA has provided numerous submissions to Treasury on the CSLR.

Our most recent submission in response to the consultation on the scheme exceeding the subsector cap was provided in August 2026. The link to that submission is here.

SIAA attended a meeting with Treasury on 8 May 2026 to discuss our initial feedback on the Consultation Paper.

The CSLR is not sustainable in its current form and must be fundamentally re-designed. The CLSR was built on the shaky foundations of moral hazard. The scheme currently punishes firms who are well-resourced and have invested in their systems, processes, training and secured appropriate PI insurance cover by requiring them to pay for the misconduct of those bad actors who have failed to do so. The shortcomings of its various components are obvious now that the scheme is in operation.

Although the scheme was originally intended to be prospective, it has been swamped by legacy claims from day one.

A Regulatory Impact Statement (RIS) was never prepared in respect of the scheme – the Hayne Royal Commission Final Report was certified as being the equivalent to a RIS which clearly was not the case. The sustainability of the scheme and its impact on industry has never been fully considered.

The scheme is not funded by industry in general – it is currently funded by only four sub-sectors under the ASIC Industry Funding Model. These sub-sectors are taking the full brunt of the impact of the scheme and the lion's share is being suffered by the personal financial advice sub-sector.

The levy caps for the four impacted sub-sectors were originally set at $10 million. The sub-sector caps were increased to $20 million, again without any RIS or consideration of how this would impact the entities within the four sub-sectors and their ability to pay for the scheme.

Successive imposts of similar magnitude imposed on the personal financial advice sub-sector will threaten the sub-sector's sustainability and result in firms avoiding retail clients to minimise exposure to the levy. Small advice licensees may be forced to close their doors. For larger licensees, the levies are likely to result in an increased cost of advice as they pass on the costs of these levies to their clients. This outcome runs counter to the government's objective of increasing the availability and affordability of financial advice to Australians.

An important feature of the scheme was that the sub-sector cap was intended to provide leviable firms with guidance as to the maximum amount that was expected to be levied against them in relation to each in-scope financial product or service in a claim year. A sub-sector cap balanced the provision of compensation to claimants and scheme sustainability for those financial firms that are subject to the levy. While a levy cap provides our members with cost certainty an extra levy to fund a levy blow-out does not. The scheme does not currently allow either advisers or firms to manage risk or budgets. It is inequitable and unsustainable.

We are pleased that the government has acknowledged that the CSLR sits at the end of a chain of events that begin upstream and that in large-loss events, costs crystallise through multiple links across the financial system, including product design, distribution practices, lead generation models, superannuation switching, platform governance and managed investment scheme settings.

ASIC has identified[1] the large number of entities involved in the industrial-scale chain of misconduct leading to the collapse of the Shield and First Guardian funds involving approximately 11, 000 investors and over $1 billion in potential losses as including:

- The fund operators responsible for the managed investment schemes.
- The lead generators, including the data brokers and telemarketers who supplied the pipeline of investors.
- The research houses who rated the funds.
- The auditors who signed off on the financial reports and compliance plan audits.
- The superannuation trustees who allowed the products on their platforms.
- And finally, the financial advisers and financial advice firms that recommended the funds.

[1] Alan Kirkland, ASIC Commissioner, *Protecting our superannuation system is everyone's responsibility*, 26 March 2026.

Unfortunately, only financial advisers are currently included as a primary sub-sector of the CSLR and bear a disproportionate burden of the levies. Changes must be made to the scheme that address the contribution of these entities that are the upstream drivers of harm to ensure that they are included in the levy framework.

We provide our responses to the questions below.

Proposal 1: Enabling CSLR to deduct payments from compensation

Question 1

Do you support allowing the CSLR operator to reduce compensation payments by considering all relevant amounts that a claimant may receive in connection with the matters covered by an AFCA determination?

SIAA supports passing regulations that expressly allow the CSLR operator to reduce compensation payments by considering all relevant amounts that a claimant may receive in connection with the matters covered by an AFCA determination. We understand that regulations specifying these deductible categories are needed to allow the CSLR to deduct amounts received through other avenues connected to the same underlying matters such as payments received through a class action, a deed of company arrangement or insurance proceeds or to reflect the value of retained assets where the determination required those assets to be transferred. It is critical that the regulations also capture the situation where parties have paid compensation to complainants as part of legal proceedings initiated by ASIC, such as the recent court-enforceable undertaking by Macquarie Investment Management Limited (Macquarie) to pay approximately $321 million to over 3,000 members who invested in the Shield Master Fund through their platform.

We agree that providing the scheme operator with these powers could improve the integrity and sustainability of the scheme by ensuring that appropriate deductions can be made beyond categories currently included in the Corporations Law. We also consider that it will improve efficiency if these powers are provided to the scheme directly rather than the operator being reliant on the wording of AFCA determinations.

One of the many criticisms of the current scheme is that it does not operate as a true scheme of last resort. Our members who fund the scheme are particularly concerned to ensure that there is no ‘double dipping’ by claimants who are paid monies under the scheme and then later recover monies through some other avenues that are connected to the same underlying matters.

We note recent media reports that liquidators for Shield expect to recover approximately 70 cents in the dollar. These recoveries will eventually be paid to claimants but it is currently unclear when this will occur. In the meantime, complainants who have lost money in the Shield collapse have lodged complaints with AFCA and received determinations. It is expected that many of these determinations will be unpaid by the financial firm and will flow through to the CSLR.

While SIAA supports the proposal allowing the scheme to deduct payments in principle, we are unsure how the approach will work in practice. We have detailed our concerns in response to question two below.

Question 2

What factors should the government consider in terms of timing?

2.1 How should the reform balance ensuring timely payment of claims to consumers with ensuring accurate information about other payments?

We agree that a key implementation issue of this proposal is timing and that in many cases relevant offsets will not be known when the CSLR is ready to pay compensation, particularly where amounts depend on external processes such as class action settlements or outcomes or payments under external administration arrangements. Indeed, company administrations and liquidations can take many years to complete. While regulations can provide the operator with sufficient flexibility to apply deductions accurately and in a timely way to ensure it can verify the existence and quantum of deductible amounts, we consider that in most cases, this will significantly delay payment of compensation to claimants.

We note that during our meeting, Treasury confirmed that the original intent of the scheme was to provide **timely** payment to complainants. Accordingly, there is a real tension between ensuring that the scheme is truly one of last resort where payments are not made until administration/liquidation processes have been exhausted and a scheme that provides for timely payment of compensation.

We consider that the only approach that balances these opposing aims is one that:

- allows the scheme operator to pay a complainant in a timely manner, notwithstanding that accurate information about other payments may not yet be available, and
- grants the scheme operator expanded subrogation rights to pursue those recoveries for the benefit of the scheme.

Our comments on expanding CSLR subrogation rights are contained in our response to Proposal 2: Expanding CSLR subrogation rights.

2.2 Should the CSLR have a clawback mechanism for cases where deductible amounts were not known at the time of payment?

While a clawback mechanism that allows the scheme operator to force complainants to repay amounts subsequently received may ensure that the scheme is operating as a true scheme of last resort, it is difficult to see how it would work in practice. For this reason, **SIAA does not support** providing the CSLSR with a clawback mechanism.

Clawback of superannuation payments

For a clawback mechanism to work payment of compensation would be contingent upon the complainant signing a deed imposing on them the requirement to repay any future recoveries.

The challenges of clawing back payments from complainants who hold their investments through their superannuation have been highlighted in a recent AFCA determination (case number 12-25-273837), in which the financial firm (Interprac) was directed to pay compensation to the complainant (Ms A) *contingent upon Ms A signing a Deed agreeing to assign the right to receive any future return on her First Guardian investment from the liquidation of First Guardian and/or the ASIC proceedings against Diversa to the financial firm.*

The key issue is that any potential payout from First Guardian or Diversa would be to the trustee of the complainant's superannuation fund that is subject to trustee obligations and rules that restrict the ways in it can deal with member benefits and generally prevents the use of fund assets for the benefit of non-members. It is therefore unclear if the trustee could direct any payout to the financial

firm. InterPrac's solution has been to provide a deed to Ms A that stipulates she must pay any double compensation out of her own pocket rather than from her superannuation. The complainant has argued that it is unrealistic to expect her to come up with the money and that she would be forced to take out a loan to reimburse the financial firm.

Identical issues may arise if the operator of the scheme tried to use clawback powers to require complainants to repay the scheme for any amounts they may subsequently receive.

Administrative burden on the scheme

Administering a clawback mechanism is likely to impose significant resourcing burden on the scheme with staff having to supervise complainants who had received compensation and were expected to receive a distribution from a liquidation or administration. Legal proceedings to clawback amounts from complainants will also be costly for the scheme to administer. Unfortunately, any administrative costs must be paid for by leviable entities which will further increase the costs imposed on our members who are subject to CSLR levies.

Proposal 2: Expanding CSLSR subrogation rights

Question 1

Do you support Option 1 (expanding subrogation rights to the full AFCA determination amount) or Option 2 (extend subrogation to additional recovery sources) to expand the CSLR operator's subrogation rights?

Option 1

SIAA strongly supports providing the CLSR with subrogation rights for the full value of the compensation it pays to the complainant.

SIAA does not support expanding CSLR subrogation rights to the full value of the AFCA determination to the extent it exceeds the payment made by the scheme.

We do not consider it fair to limit a complainant to a payment of $150,000 and grant the scheme operator a right of subrogation for a higher amount.

This design would represent a material shift from subrogation limited to amounts paid and would require a complainant to forgo recovery of amounts in excess of the scheme cap. We are also concerned that this approach may disadvantage the position of other claimants in an insolvency and have unintended consequences on the order of priority. We do not support changes to the scheme that may have a negative impact on other provisions of the Corporations Act concerning insolvency.

Option 2

SIAA strongly supports extending subrogation rights to enable the operator to pursue recoveries from a broader set of sources, addressing limitations identified in current arrangements. **SIAA supports** the removal of legal and practical obstacles that prevent the CSLR operator from pursuing recoveries where it is economical to do so. It is important that the cost burden borne by levy payers is reduced. **SIAA strongly supports** expanding CLSR subrogation rights to empower the scheme to make claims against a financial firm's PI insurer. It is critically important that PI insurance proceeds can be claimed by the scheme and used to offset amounts that it has paid out to complainants.

We note that even with these changes recoveries will remain constrained by the underlying economics of the sector, including the limited asset base of financial advice firms, and that recoveries from these sources are unlikely to 'move the dial' in reducing the levy burden. This is why we consider that it is critical that rights of subrogation are not limited to actions against the assets of financial firms but expanded to enable recovery of proceeds from the liquidation of the funds in which the complainant has invested. For example, **SIAA strongly supports** regulatory changes that would enable the CSLR operator to lodge a claim with the liquidator of Shield up to the amount of the compensation it has paid to the complainant.

Question 2

Are there sufficient benefits to pursuing legislative reforms in the context of limited recoveries?

We consider that there are sufficient benefits to pursuing legislative reforms that remove the legal and practical obstacles that prevent the CSLR operator from pursuing recoveries where it is economical to do so. It will be important that the scheme operator carefully weighs up the benefits of its actions to ensure that the cost of pursuing its subrogation rights against third parties do not exceed the recoveries.

SIAA recommends expanding the scheme's subrogation rights to include those that the complainant would have against the failed funds as these are more likely to result in recoveries of the paid amounts.

Proposal 3: Technical improvements

Question 1

Do you support the additional technical improvements?

Allow payments to multiple accounts: We support this improvement. It is a sensible change.

Non-participant exemptions for further special levies: We support this improvement.

Minimum levy imposition for special levies: We support this improvement. It appears to have been a technical drafting oversight.

Define entity metric for market participants: We support this improvement as it aligns the metric with the ASIC Industry Funding Model. The ASIC Industry Funding Model was designed to fund ASIC and is used as the basis of the CSLR levy for administrative efficacy. The model was not designed however, to fund the CSLR. We caution against changing the levy metrics of the ASIC Industry Funding Model without considering the impact it would have on the levied population and whether it is fair to change the metric for some sub-sectors but not others. Tinkering with the levy metric for market participants, for example, may require these entities to provide a different data set to ASIC that their systems are not currently designed to do. As we discussed at our meeting with Treasury, a change to the entity metric would be difficult to audit and would require significant system changes, thereby imposing a burden on our member firms who are market participants. Changing the metric to exclude wholesale clients will not be simple. A client's wholesale categorisation can change during the year as their circumstances change. By way of example, their accountant certificate may lapse and may not be renewed for a period of time, during which they are classified as a retail client. Whether a client is categorised as wholesale can also depend on the amount invested in a product

(under the product test) or whether they are purchasing the product as an individual or SMSF. Treasury would be aware of the recent decisions by AFCA that it will treat SMSFs as retail clients unless they hold at least $10 million in net assets. This may further complicate the type of clients that are categorised as wholesale for the purposes of the metric calculation. In addition, the trading activity of firms such as Stake, Westpac and Selfwealth that outsource their execution to a Trading Participant is typically counted as wholesale notwithstanding that their end clients are retail.

Prevent payments being made for unauthorised conduct and for products/services that fall outside scope of CSLR: We support this improvement.

Disallowance period: We support this improvement.

Align special levy imposition with qualifying period: We support this improvement.

Question 2

Which technical improvements should be prioritised?

We understand that the scheme operator is experiencing administrative problems with its inability to pay compensation to multiple accounts.

We also understand that the current disallowance period of 15 days creates administrative problems for the operator preparing accurate levy estimates.

SIAA recommends that these two technical improvements should be prioritised.

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

Question 1

Do you support Option 1 (limiting CSLR-eligible compensation to capital losses only) or Option 2 (Prescribing the use of a counterfactual benchmark) to support scheme sustainability?

Option 1

SIAA strongly supports limiting CSLR-eligible compensation to capital losses only and excluding a counterfactual component in calculating the loss. This will mean that compensation is limited to consumers who have experienced a net capital loss when assessed across the portfolio that is subject to the relevant advice.

Extending compensation to hypothetical ‘but for’ losses is severely impacting the sustainability of the scheme to help as many impacted consumers as possible be restored to their previous position by repaying their capital losses.

SIAA has long highlighted the problem arising from awarding losses calculated on a ‘but for’ basis that has resulted in the scheme not just compensating for investors’ actual financial losses but covering their unrealised estimated profits. This has been particularly the case for Dixon Advisory complaints with the scheme reporting that about 80% of amounts paid by the CSLR to Dixon Advisory complainants are ‘but for’ losses, leaving just 20% as involving an actual capital loss. ‘But for’ losses are a key reason for the FY2026 levy blowout.

The scheme must be re-designed to ensure that it responds to actual losses rather than guarantee an investment return for investors. The CSLR was never intended to underwrite investment risk or pay complainants hypothetical 'but for' gains they did not receive because of their investment decisions. That is what is currently taking place with the CSLR essentially guaranteeing the investment returns of claimants.

We agree that where the responsible firm does not bear the cost, compensating counterfactual outcomes extends beyond the role of a last-resort safety net and places unreasonable pressure on scheme sustainability. A capital loss approach aligns the CSLR more closely with its role as a mechanism of last resort by focussing compensation on restoring consumers to their original capital position, rather than compensating them for the investment performance that would have received but for the advice.

We point out that in the recent ASIC proceedings relating to the Shield and First Guardian funds, Macquarie and Netwealth both entered into court-enforceable undertakings to repay members 100% of the amounts they invested in the funds less any amounts withdrawn. No 'but for' losses were paid by either party to its members in these proceedings.

SIAA has raised long standing issues with the determination of 'but for' losses by AFCA where member firms have no practical recourse to appeal. Unlike the legal system, AFCA does not apply laws of evidence. Its decision makers are not judges. Nor are they informed by the expertise of expert witnesses, essential when dealing with complex damages calculations. We have pointed out that while this approach may be appropriate when dealing with small and simple disputes it is unsatisfactory when dealing with a suite of cases resulting in determinations involving hundreds of millions of dollars. It is particularly unfair when the burden of these compensation payments is placed on the financial advice sub-sector with no ability to apportion fault to other entities involved in the misconduct.

Administrative burden of 'but for' losses

The inclusion of 'but for' losses in the scheme also results in significant delay in the administration and payment of claims and increases the costs of administration. AFCA is currently spending considerable resources determining the complaints lodged by clients of Dixon Advisory that include complex 'but for' loss calculations that make up 80% of the compensation amounts. Finalising these claims would take much less time and administrative resources if AFCA was only required to determine the complainants' capital losses. Because the scheme is designed to pay AFCA's fees, millions of dollars of the scheme's budget is paid to AFCA for their processing fees and administrative costs. These charges are passed on to the industry via the annual levies. AFCA's processing fees have grown into the millions, with estimated per-claim processing costs climbing substantially to over $21,000 for certain complex claims. If AFCA was not required to calculate 'but for' losses for complaints proceeding to the CSLR, its costs of administration would be reduced.

Question 2

What considerations should the government have for choosing an implementation pathway (fairness, time to implement, cost savings)?

The impact of this change will not significantly reduce levies for some time due to the large numbers of claims that have already been lodged with AFCA arising from existing financial firm failures.

SIAA recommends that the government implements the limitation on the payment of 'but for' losses as soon as possible to improve the sustainability of the scheme and reduce the levies. The government must determine a date, after which all complaints that have been lodged with AFCA are no longer able to claim 'but for' losses if their determination is unpaid and proceeds to the CSLR.

SIAA recommends that the proposal is implemented through the AFCA scheme by changing AFCA's approach to calculating loss in complaints expected to be eligible for the CSLR. AFCA has the facts and materials before it to determine the complaint. It is the most appropriate body responsible for determining the capital loss component. It also has the administrative resources to enable it to do so.

SIAA does not recommend assigning the responsibility to the CSLR to remove the counterfactual component from the unpaid AFCA determination amount. This is not a role that the scheme has been resourced to undertake.

Question 3

Is CPI or Government Bond rate a more appropriate basis for calculating the counterfactual position? What alternative rate could be used?

SIAA does not support including a counterfactual component in any payments under the scheme.

Proposal 5: Embedding greater certainty in the special levy framework

Question 1

Do you support introducing a rules-based three-tier special levy waterfall to manage funding shortfalls when scheme costs exceed one or more sub-sector caps? Are there alternative tier structures that would better balance certainty, fairness and sustainability?

SIAA supports a rules-based special levy waterfall to ensure scheme levies are more sustainable and to address the unfairness of the scheme's design. However, as currently designed the waterfall only manages funding shortfalls when scheme costs exceed one or more sub-sector caps and the Minister determines a special levy. It does not address the key issue identified by SIAA – that an additional primary subsector should be included in the levy framework with its own subsector cap against which relevant determination amounts are apportioned.

The architecture of the scheme needs to be fundamentally changed to ensure that the requirement for a special levy does not arise or arises only rarely in response to a 'black swan' event.

Inclusion of managed investment schemes in the primary subsector

To reflect the true cause of the losses, the levy framework must first be changed to include responsible entities of managed investment schemes as a primary subsector with its own $20 million levy cap.

SIAA strongly supports changes to the scheme to include responsible entities of managed investment schemes as a primary subsector that are subject to annual levies.

As SIAA has pointed out in its previous submissions to Treasury, a key defect of the scheme is that responsible entities of managed investment schemes are not included in the CSLR levy as a leviable sub-sector even though poorly performing or failed schemes are the overwhelming contributor to

the costs of the CLSR. Another key defect is that AFCA is unable to apportion blame to managed investment schemes in its determinations. This results in the personal financial advice sub-sector bearing the full costs of failed or poorly performing managed investment schemes where advice has been provided. Large scale investment related losses are rarely caused by personal financial misconduct alone. However, under the Corporations Act, breaches of the best interests duty and failure to give appropriate advice are 'non-apportionable' claims under the proportionate liability statutes. This means that if a financial advice firm breaches its obligations to provide appropriate advice and act in the best interests of their client resulting in them suffering loss, the financial firm is held liable for the entirety of the client's losses irrespective of any breaches committed by the managed investment scheme or any other party (absent the client's contributory negligence). The risks of investing in managed investment schemes are therefore concentrated in the personal financial advice sub-sector. Essentially every managed investment scheme collapse or under-performance that flows through to the CSLR is paid for by the personal financial advice sub-sector where the complainant has sought advice on that product. Clearly if these managed investment scheme complaints are being included 'de-facto' in the scheme, the responsible entities of managed investment schemes must be included as a primary leviable sub-sector and a portion of the losses must be attributed to these entities.

History of the scheme's design

Originally, managed investment schemes were specifically excluded from the scope of the CSLR due to their elevated risk profile and a need for a financially sustainable scheme. As a result, the responsible entities of managed investment schemes were not included as a leviable sub-sector. The reasons for this decision were included in a briefing paper from the Treasury to the then Assistant Treasurer[2] that stated that failures of managed investment schemes *have and will continue to be a significant category of unpaid claims* and *including managed investment schemes in the CSLR raises risks and broader design issues*. The briefing paper noted the number of significant managed investment scheme failures where investors had lost their investments and that while the *failures were sporadic they were high profile and often involve significant amounts of money.* Treasury estimated that investments lost as part of managed investment scheme failures since 2009 were approximately $3.5 billion. The paper highlighted the impact on the levy paid by the top 10 financial firms if managed investment schemes were included in the scheme and expected that including those claims within the scope of the scheme would result in more managed investment scheme-related complaints being lodged with AFCA, further increasing the costs for the scheme. As a result, the paper recommended deferring a decision about whether the scope of the CSLR should be extended to include managed investment schemes while noting the Ramsay Review recommendation that the CSLR should be designed to be scalable to cover other types of financial services, should **significant problems with unpaid compensation arise in the future**.

As significant problems with unpaid compensation have arisen, it is time for the government to change the levy framework and include managed investment schemes as a primary sub-sector subject to a $20 million levy cap.

Defects in the special levy waterfall framework

[2] Treasury.gov.au, /freedom of information reference: 3586.

The rules-based levy waterfall framework has been designed to respond more predictably to large-scale, investment-related losses arising from personal financial advice misconduct where costs exceed the annual sub-sector levy cap of $20 million. As ASIC has pointed out, these investment-related losses do not solely relate to personal financial misconduct but are part of a long chain of misconduct by many entities. The design parameters ignore this and do not include these other entities until the second tier has been activated and the personal financial advice sub-sector has paid $40 million in levies – twice the levy cap (and four times the cap included in the legislation when it was first tabled in Parliament). This results in the personal financial advice sub-sector being charged $40 million in levies each time there is a substantial funds collapse. It is being hit twice before any other sub-sector is levied.

It is inequitable and unsustainable for such a large portion of losses arising from the misconduct of bad actors carried out on an industrial scale to be sheeted home to the personal financial advice sub-sector. This is an industry-wide issue that must be dealt with by the entire industry, not limited to the personal financial advice sub-sector. Sectors whose products and/or services are identified as being connected to the losses must be included in the first tier of special levies. It is entirely unfair that sub-sectors connected to the losses are shielded from levies and are only included in the second tier of the waterfall.

We recommend that the primary levy and special levy waterfall framework be re-designed as follows:

- Responsible entities of managed investment schemes be included as a primary sub-sector with a $20 million levy cap and losses apportioned against that sub-sector when a failed or poorly performing managed investment scheme is a cause of the losses. Inclusion of this primary sub-sector to the levy framework eliminates the need for the primary sub-sectors to be levied again in tier 1 of the waterfall.
- A new first tier will comprise those sectors whose products and/or services are identified as being connected to the losses up to a $20 million levy cap for each sub-sector. This category would exclude the primary sub-sectors and would include entities such as platform operators. This tier will help address the issue that AFCA is unable to apportion fault where both advice and product fact patterns have contributed to losses.
- The second tier will include all retail facing sub-sectors whose products and/or services are typically available for and provided to retail clients in accordance with their AFSL and who benefit from the CSLR's contribution to trust and confidence in the financial system. This tier is an acknowledgement that as the framework is unable to legally attribute fault, the burden must be spread as widely as possible in a way that impacts industry participants as little as possible. This tier will operate as a backstop.

The framework would only be effective if it limits the losses to the personal financial advice sub-sector to $20 million. Further consideration would be needed on how to exclude the personal financial advice sub-sector from the special levy to ensure the sustainability of the sector.

Question 2

Is 'connection' an appropriate basis for allocating costs across tiers in a repeatable framework?

2.1 If not, what alternative approach should be used, and how could it be implemented effectively in a way that is sustainable and facilitates timely payments of compensation to consumers?

2.2 How should 'connected' sub-sectors be identified in practice?

Historically, complex matters involving misconduct of multiple parties are the subject of court proceedings that join each party to the action allowing definitive attribution of fault or legal responsibility across multiple parts of the value chain or broader eco-system. Since the introduction of the CSLR, complainants are unlikely to commence legal proceedings as CLSR eligibility is dependent on receiving a determination from AFCA. In the absence of court findings, the only appropriate basis for allocating costs across tiers in a repeatable framework is to ascertain the connection between the losses underpinning CLSR-eligible determinations and certain entities.

We agree that connected sub-sectors would be identified using case-level information already made available to AFCA throughout its complaints process, supplemented by data held by regulators and that AFCA would continue to identify the product or service to which the advice relates which can be mapped to existing sub-sectors through the ASIC Industry Funding Model and licensing frameworks. We also agree that it may be necessary to enhance internal data-sharing practices among AFCA, ASIC and CLSR where matters span multiple products or services.

In the Shield and First Guardian matters this information sharing will be relatively straightforward. ASIC is currently working on 26 investigations and has commenced 12 cases against 21 defendants[3].

Question 3

What evidence or data should be used to establish 'connection' to the losses (recognising the challenges of attributing fault across a value chain)?

3.1 What governance or assurance steps would improve confidence in the classification of a sub-sector as connected?

We repeat the points we have made above regarding the information that would identify those entities that are connected to the losses.

Question 4

Are the proposed special levy caps appropriately calibrated to provide certainty and support sub-sector viability, while enabling timely compensation payments?

4.1 If not, at what level should special levy caps be set for each tier, and how do they produce a better overall outcome for the financial system?

A key issue identified by our members is the lack of accountability that is currently undermining confidence of financial advisers in the scheme. We note that the initial cost estimates for the scheme for the 2027 financial year do not include the costs of complaints arising from the collapse of the Shield and First Guardian funds but that indicative estimates increase the personal advice funding task to $251.9 million. This is an unreasonable and unsustainable.

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[3] Alan Kirkland, ASIC Commissioner, Protecting our superannuation system is everyone's responsibility, 26 March 2026.

SIAA recommends that a total levy cap of $20 million be set for the personal financial advice sub-sector. This reflects the following matters:

- The sub-sector is comprised of 15,000 financial advisers, about half of the number of advisers that were in the sub-sector in 2019.
- The sub-sector has already paid a number of annual levies plus the FY2026 special levy despite the losses arising from the failure or poor performance of managed investment schemes.
- Licensees in the sub-sector are also impacted by special levies imposed on all retail-facing sub-sectors as they fall within other sub-sectors such as corporate advisers, securities dealers, market participants and managed discretionary account providers. In addition to the personal financial advice sub-sector levy these licensees were required to pay the FY2026 special levy.
- Market Participants providing personal financial advice to retail clients are leviable under the CSLR. These entities already contribute to a compensation scheme run by the National Guarantee Fund, which currently holds over $130 million in funds to be used in the event of a Market Participant failure. There is no recognition in the scheme design that Market Participants already contribute to a last resort scheme – they are treated like any other provider of personal financial advice to retail clients.

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

Question 1

Do you see merit in levying a subset of SMSFs to support CSLR special levy funding pressures?

SIAA does not support proposals that would exclude SMSFs from recovering losses under the scheme. We do not support excluding investors from being able to claim under the scheme purely because of the way in which they hold their investments. Our position is based on the following:

- While early experience with the CSLR shows that complaints lodged by SMSFs have been a major contributor of scheme costs to date, this is because a large portion of the claims are being paid to clients of Dixon Advisory who held their investments in SMSFs and are receiving large amounts of compensation in ‘but for’ losses. We note that most clients who invested in Shield and First Guardian did not do so via a SMSF. The proportion of SMSF losses are therefore likely to decrease over time.
- SMSFs are a self-managed savings vehicle for investors. Clients can hold investments in their own name, jointly, in a family trust, company or SMSF. It does not make sense to allow a client who has suffered loss as a result of misconduct to claim those losses from the CSLR if they invested via a family trust for example, but not if they invested via their SMSF.
- The proposals concerning the opt-in and opt-out mechanisms are complex and likely to cause confusion to clients. Importantly, they are likely to reduce the confidence of investors in the financial services industry. The proposals appear to punish investors for taking an interest in their superannuation and establishing an SMSF to provide for their retirement.

- The CSLR levy framework is based on the ASIC Industry Funding Model. Leviable entities must hold an AFSL and hold AFCA membership. SMSF's satisfy neither of these requirements and cannot be levied under the current framework.
- The CSLR was never designed to treat an SMSF investor in the same way as a product issuer or financial services provider. SMSFs don't issue products to investors or provide services. They receive services and acquire products from AFSLs – they are customers. Treasury has advanced no argument why SMSFs should not be treated like other consumers and continue to have access to redress where loss arises from misconduct and results in an unpaid determination.

Wholesale SMSFs

We consider that there is a cohort of SMSFs that should be excluded from claiming losses from the CSLR. A significant issue for the financial advice industry is a series of decisions by AFCA that it will treat SMSFs as retail clients unless they hold at least $10 million in net assets. AFCA has stated that it will hear and determine these complaints even where the investment aspect of a SMSF has been treated as a wholesale client by the relevant licensee and the self-managed superfund has invested in wholesale financial products. SMSFs typically hold net assets well below the $10 million threshold, due to the contribution rules, so these determinations will impact close to 100% of wholesale self-managed superfunds. The result of AFCA's determinations is that SMSFs who hold investments in an underperforming wholesale-only product can claim that the advice to invest in that product was not appropriate and bring a claim to AFCA that it will accept. If a series of these complaints flow through to the CSLR, they will be another significant source of costs for the scheme.

The determination by AFCA that a self-managed super fund holding net assets of less than $10 million is a retail client is in direct conflict with the corporate regulator's position. Previously, ASIC had expressed the view that generally, for financial services provided to the trustee of a self-managed super fund, a $10m net fund value threshold applied before the trustees could be dealt with as a 'wholesale' client for the purposes of investment advice. ASIC then revised this view and stated via media release that where the trustee of an existing superannuation fund receives advice about how to invest the fund's assets, ASIC will not take action if the person providing the advice determines whether the trustee is a wholesale client based on the general test rather than applying the higher $10 million net asset test.

AFCA has advised SIAA that it is of the view that as a decision-making authority it is charged with making legal decisions based on their interpretation of the law, that is, they believe they can set a legal precedent. For the CSLR to be sustainable going forward AFCA will need to limit its determinations to retail clients in accordance with the original legislative intention. If AFCA continues to accept wholesale client complaints it is inevitable that wholesale client determinations will flow through to the CSLR.

The payment of compensation to wholesale clients is not the intended objective of the CSLR.

AFCA's current approach is in direct conflict with ASIC's position and clarity is needed for the financial services industry.

The proposals to include SMSFs as leviable entities under the CLSR would require a significant amount of regulatory change and complexity. Rather than make these changes that would impact all SMSFs, **SIAA makes the following recommendations**:

- AFCA's operating rules be amended to ensure that it is unable to accept complaints from clients that have been classified by the relevant licensee as wholesale, including SMSFs that that are determined as wholesale based on the general test.
- The government amends the relevant section of the Corporations Act to ensure it is consistent with ASIC's no action letter regarding the treatment of SMSFs as wholesale.

Question 2

Two sub-options are provided to define the SMSF cohort subject to the levy (that is, an opt-in or an opt-out mechanism). What option do you think best balances the need for scheme sustainability with the risk of imposing costs onto SMSFs with no relevant connection to advice-related misconduct? Or is there an alternative option that would best balance these factors?

2.1 What factors should be considered for an opt-in or opt-out model to minimise the regulatory burden for SMSFs?

SIAA does not support either of the options to define an SMSF cohort that would be subject to a levy.

Questions 3 to 10

As **SIAA does not support** excluding SMSFs from claiming losses from the scheme we do not provide any feedback on these questions.

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

Question 1

If proposal 6 were implemented, should the government identify a 'lower-risk' segment of the MIS sector that would not be subject to the special levy?

1.1 If so, what indicators do you consider should be used to identify a MIS as low risk?

1.2 If additional data were required to be collected to implement risk informed levying, would this option create any additional regulatory burden for the MIS sector?

We note with disappointment that the government is not considering bringing managed investment schemes into scope of the CSLR annual levy (via inclusion as an in-scope product or service) but instead is considering how best to apply to apply a special levy to the managed investment scheme sector where a special levy is enlivened.

Under the current waterfall proposal, a levy would only be imposed on managed investment schemes once the personal financial advice sub-sector had been levied a total of $40 million in both annual and special levies. This is unfair and overlooks that in many large loss events, losses are associated with failed or poorly performing management investment schemes.

SIAA recommends that the scheme include managed investment schemes as a primary sub-sector and that a broad-based levy be applied consistently across all management investment schemes to maximise simplicity and administrative efficiency.

Question 2

What do you consider the consequences would be of excluding low risk MISs from the special levy?

SIAA does not support excluding lower-risk managed investment schemes from the levy. We agree that there are significant practical challenges associated with identifying lower risk managed investment schemes due to data limitations and a lack of a current agreed definition of a low-risk managed investment scheme.

Question 3

How should the government weigh the trade-off between minimising administration costs with the benefits of a more targeted approach?

We have no comment on this question.

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

SIAA does not have feedback to the questions relating to this proposal.

Conclusion

If you require additional information or wish to discuss this submission in greater detail, please do not hesitate to contact SIAA's policy manager, Michelle Huckel, using the contact details in the covering email.

Yours faithfully

Maria Lykouras
Chief Executive Officer