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Email: CSLRreview@treasury.gov.au

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

Dear Sir/Madam

Compensation Scheme of Last Resort: exceeding sub-sector cap

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 they provide wealth advice and portfolio management services.

Our member firms are a small but important group of firms that are members of the Australian Financial Complaints Authority (AFCA). Our member firms are also 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](#).

Consultation Paper on Compensation Scheme of Last Resort (CSLR): exceeding sub-sector cap

Thank you for the opportunity to provide feedback on Treasury's Consultation Paper on how to deal with the blow out in the sub-sector levy cap. SIAA has long expressed concerns about the sustainability of the CSLR and the impact on our member firms and this consultation vindicates all the concerns that we have previously expressed.

SIAA provided a comprehensive submission to the Treasury post-implementation review. A link to this submission is [here](#).

We provide our feedback as it relates to the various sections of the consultation paper.

Executive summary

- Any solution arising from this consultation that only deals with the current cost blow-out is merely a temporary band-aid. The scheme 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.
- The government's renegeing on its promise to fund the scheme's establishment and costs for the first year has exacerbated the negative consequences of the design of the scheme. The scheme never had the opportunity to build up its reserves. No RIS was provided to explain this decision. It can only be assumed that the government saw exactly what was coming and made sure it didn't have to contribute to it.
- It is inequitable and unsustainable for all of the 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.
- The most appropriate option for dealing with the FY26 levy blow-out is to impose a special levy on a large number of sub-sectors under the ASIC Industry Funding Model that spreads the cost burden as widely as possible. While imposing a special levy on all retail-facing sub-sectors to pay for the FY26 levy blow-out is the least worst of the five options any apportionment must be based on the following:
 - The government must pay an amount that accords with the remaining 9 months of the first year of the operation of the scheme. This reflects the original version of the scheme that was presented to industry. It also serves as a proxy for the failure of the regulator to deal with the Dixon Advisory and UGC matters in a more timely fashion.
 - The personal financial adviser sub-sector must be excised from the levy to account for the fact that the entities in this sub-sector are already required to pay a \$20 million levy. Many licensees in this sub-sector will also be impacted by a special levy imposed on all retail-facing sub-sectors as they fall within other sub-sectors such as corporate advisers, securities dealers and managed discretionary account providers. This will result in these licensees being required to pay a special levy in addition to the personal financial advice sub-sector levy.
 - Responsible entities should be required to pay a substantial portion of the special levy to reflect the fact that failure of managed investment schemes is a key driver of the FY26 levy blow-out.
 - The scheme must be redesigned to ensure that special levies in future result from a 'black swan' event rather than business as usual. The imposition of a special levy should not be a something that happens year after year.

- Once the Minister has dealt with the FY26 levy blow-out, consultation is needed with industry to re-design the scheme. The number of leviable sub-sectors must be increased to align with the circumstances giving rise to claims. If losses resulting from the failure or poor performance of managed investment schemes are to be accepted by the CSLR, responsible entities of managed investment schemes must be included as a primary leviable sub-sector with its own \$20 million cap.
- An essential component of any redesign of the CSLR will involve placing significant checks and balances on AFCA. The payment of compensation to wholesale clients is not the intended objective of the CSLR. The government must amend AFCA's operating rules to ensure that it is unable to accept complaints from clients that have been classified by the relevant licensee as wholesale.

Background

The CSLR essentially makes promises that it can't afford to keep. 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 subsectors 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 sub-sector 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.

Any solution arising from this consultation that only deals with the current cost blow-out is merely a temporary band-aid. The scheme is not sustainable in its current form and must be fundamentally re-designed.

The unsustainability of the scheme was recognised by the previous minister in January 2025 when he announced Treasury's post implementation review into the sustainability of the scheme as a result of the original estimate of the FY26 levy blow-out. Minister Stephen Jones spoke about the sustainability of the scheme in light of issues such as providing compensation for hypothetical losses that he stated were not consistent with the original objectives of the scheme and would build irreversible unsustainability within it.¹Legislative framework

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.

As regards the FY26 levy blow out, there is no point spreading compensation over a long period of time, doing nothing or raising a levy that does not raise the full amount. Because of the tsunami of

¹ Independent Financial Adviser, *CSLR review not a 'backdoor mechanism' to roll in MIS: Jones*, 25 March 2025.

claims forecast to hit the scheme over the next few years, delaying the payment of the complaints for one period merely rolls the liability over to the next period – the amount owed snowballs.

It is convenient that the legislative framework does not contemplate the government making a financial contribution to deal with any excess claims, fees and costs estimate. The scheme was designed by government and it has deftly side-stepped its commitment to pay for the first year of the scheme.

When the former coalition government introduced the scheme, it said historic claims would be met by the major financial institutions (who have paid \$241 million), while the government itself would fund the scheme's establishment and costs for the first year.

The bill lapsed with the calling of the election but was soon reintroduced by the new government with some important changes. The sub-sector caps were increased to \$20 million and the government-funded levy period was shortened so that it applied for only six months. However, the decision on when the government's liability started was up to the Minister, who decided that the scheme would commence on 1 April 2024. What was meant to be a year's worth of government funding ended up being a quarter of it.

Farcically, the actuary report published by the scheme last year showed that the government's contribution of \$4.8 million has not even been used to pay a single complaint due to the lower volume of claims determined by the Australian Financial Complaints Authority (AFCA) during the first levy period and the time needed by CSLR to process a claim to payment after it has been lodged.

The government's renegeing on its promise has exacerbated the negative consequences of the design of the scheme. The scheme never had the opportunity to build up its reserves. No RIS was provided to explain this decision. It can only be assumed that the government saw exactly what was coming and made sure it didn't have to contribute to it.

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

We note that the Consultation Paper states that no element of the CSLR funding model is predicated on direct industry culpability for particular instances or classes of misconduct. If this is the case, the levy should be spread as broadly as possible. Currently the scheme has a disproportionate impact on financial advisers.

Successive imposts of similar magnitude imposed on the personal financial advice sub-sector will threaten the sub-sector's sustainability or result in firms avoiding retail clients in order 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 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.

Our detailed responses to the questions in the Consultation Paper follow.

High-level options under section 1069H

Question 1

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

The most important principle that the Minister should have in mind when considering high-level options for dealing with an excess estimate is that of scheme sustainability. The Minister must also take account of how the various aspects of the scheme's flawed design has resulted in a scheme that is unsustainable:

- **Impact of managed investment schemes:** 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 Treasurer² 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**.
- Unfortunately, while responsible entities of managed investment schemes are not included in the CSLR levy, the overwhelming contributor to the costs of the scheme have resulted from failed or poorly performing managed investment schemes. This is due to a flaw in the scheme's design that 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. This is having an enormous and unsustainable impact on the CSLR. AFCA's approach paper to determining compensation in complaints against financial advice firms where the responsible entity of a managed investment scheme has become insolvent

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

highlights the fundamental flaw of the scheme. 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 leviable sub-sector and should contribute a major portion of the FY26 levy blow-out.

- Investors who have invested in failed managed investment schemes or other failed products may not even have to obtain personal advice for their claim to be referred to the CSLR. Recent AFCA determinations against Remi Investment Services Pty Ltd³ have been made on the basis that the firm did not provide personal financial advice (nor was it licensed to do so) but engaged in securities dealing by arranging for the client to purchase the relevant financial product. That determination involved the purchase of unsecured notes. As the firm fell within the securities dealer sub-sector the claims against this firm have been referred to the CSLR. This is another worrying trend which highlights the unsustainability of the scheme.
- **Other contributors to the losses:** It is not just failed or poorly performing managed investment schemes that are contributing to the losses that are flowing through to the CSLR. In a recent keynote address on the investor losses arising from the collapse of Shield and First Guardian, ASIC Chair Joe Longo stated:

And, while bad financial advice is obviously a key part of this problem, there are a whole range of other entities that are involved in this process that we're looking at – for example, the lead generators, the research houses, the superannuation trustees, and the managed investment schemes. Because of the number of entities involved, it can be difficult even for experienced investors to spot the problems here and what's really going on.⁴

It is inequitable and unsustainable for all of the 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.

- **Reliance on the ASIC Industry Funding Model:** Another fundamental design flaw of the scheme is that the leviable sub-sectors and the calculation of the levy is based on the ASIC Industry Funding Model. This means that weaknesses in the ASIC Industry Funding Model framework flow through to the levy framework of the CSLR. We have argued for some time

³ Remi Investment Services Pty Limited AFCA Determination 12-00-925272 where it was determined that there was no evidence to support that financial advice was provided.

⁴ <https://www.asic.gov.au/about-asic/news-centre/speeches/forward-together-addressing-misconduct-in-financial-services/>

that the ASIC Industry Funding Model is flawed. One of the biggest problems is that levies imposed on the personal financial advice sub-sector are calculated according to the number of financial advisers on the Financial Adviser Register (FAR). While the model may work when the number of financial advisers remains stable or increases, it does not work well when the number of financial advisers falls. Since the introduction of the ASIC Industry Funding Model, the number of financial advisers on the FAR has fallen precipitously. Currently there are **15,410** financial advisers listed on the FAR. This compares with 28,353 in 2018. The reduction in financial adviser numbers resulted in such an unsustainable increase in ASIC levy amounts per adviser that the levy amounts were frozen for FY21 and 22. When the scheme legislation was consulted on we argued that the regulations determining how the levies for the CSLR were to be calculated should not be finalised until the ASIC Industry Funding Model review took place. However, the recommendations arising from Treasury's review of the ASIC Industry Funding Model were never implemented and the flawed levy model was incorporated into the CSLR design. Financial advisers are now faced with unsustainable levies under both the CSLR and the ASIC Industry Funding Model. Essentially, the ASIC Industry Funding Model is not fit for purpose for the CSLR. Hundreds of millions of dollars' worth of claims are being imposed on **15,410** financial advisers. The cost of the scheme must be spread more widely among industry entities for FY26 and the scheme re-designed so that larger number of entities are liable for the levies going forward.

- **The impact of legacy claims on the scheme:** A large portion of the cost blow-out for FY26 comprises claims against Dixon Advisory (estimated at \$9,597,000 in determinations for FY 26). While complaints lodged with AFCA between 1 November 2018 and 7 September 2022 have been covered by a levy imposed on the top 10 largest APRA-regulated financial institutions (other than private health insurers and superannuation funds) this left a period between 8 September 2022 and April 2024 that the industry originally thought would be substantially covered by government's promise to cover the costs and claims of the first 12 months of the scheme. Because of the government's decision to renege on this promise, the industry is now liable to cover 1,092 Dixon complaints lodged from 8 September 2022 to 30 June 2024 which could total over \$135 million (less the government's contribution of \$4.8 million.) SIAA has long advocated for government to cover the costs and claims of the first 12 months of the scheme as originally promised and we consider that the Minister should take this into account when considering who should be paying the FY26 levy blow-out. Because of the impact of legacy claims the scheme was already underwater when it commenced.
- **ASIC administration fees and AFCA fees:** Leviable entities are required to pay AFCA's fees (whether the claims are successful or not) as well as ASIC's fees in administering the levy. These fees are substantial, and there are no controls in place to cap these fees. These are another reason why the government should contribute to payment of the FY26 levy blow-out.
- **The role of AFCA:** To fully understand the FY26 levy blow-out, one must understand the pivotal role that AFCA plays in making the determinations that ultimately flow to the CSLR. The AFCA scheme is no longer just a protection measure for small consumer complaints. It is a scheme where complainants can be awarded up to \$631,500 in compensation and make claims of amounts up to \$1,262,000. Member firms have no practical recourse to appeal

unlike the legal system. Indeed, it is the only compulsory member organisation where members have no rights at all. AFCA is not a court. It does not apply laws of evidence or call eyewitnesses or expert witnesses to give evidence. Its decision makers are not judges. Nor are they informed by the expertise of expert witnesses, essential when dealing with complex damages calculations. This approach may be appropriate when dealing with small and simple disputes. It is unsatisfactory when dealing with a suite of cases that may result in determinations involving hundreds of millions of dollars. The CSLR essentially concentrates the effect of these decisions to the personal financial advice sub-sector.

- **Wholesale clients:** AFCA also accepts complaints from wholesale investors even though it was not set up to do so. This means that wealthy and sophisticated clients are able to avail themselves of a dispute resolution service that Parliament never intended to apply to them. It is not uncommon for high-net-worth clients to follow higher risk strategies in the pursuit of higher returns (such as options trading, alternative investments etc) that are not available to retail clients. It is not uncommon for a client to suddenly 'transform' from a wholesale to a retail client when an investment does not perform as was hoped and for them to complain to AFCA to reimburse them for the market risk they took. These complaints are often complex and involve much higher amounts than those usually lodged by retail clients. This has the potential to impact significantly on the sustainability of the CSLR. A worrying and significant issue for the financial advice industry is the spate of recent decisions by AFCA that it will treat self-managed superfunds as retail clients unless they hold at least \$10 million in net assets⁵. AFCA has stated that it will hear and determine these complaints even where the investment aspect of a self-managed superfund has been treated as a wholesale client by the relevant licensee and the self-managed superfund has invested in wholesale financial products. Self-managed superfunds 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 any self-managed superfund client in an underperforming wholesale-only product could claim that the investment was not appropriate and bring a claim to AFCA that it will accept. If a series of these complaints flow through to the CSLR, the impact on the personal financial advice sub-sector will be profound.
- **Calculation of claims:** One impact from AFCA's approach to calculating claims is that the scheme is not just paying for investors' actual financial losses but covering their unrealised estimated profits. This is particularly the case for Dixon Advisory complaints. The CEO of the scheme, David Berry has recently revealed 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. Our submission to the Treasury's post-implementation review contains a detailed critique of AFCA's use of the 'but for' test and the significant impact it is having on the scheme. We refer Treasury to our submission on this important issue. 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

⁵ Sanlam Private Wealth Pty Limited and Royal Financial Trading Pty Limited Determinations 12-00-923475 and 12-00-1080719: Dealership Services Pty Limited Determination 12-00-768719.

investment decisions. That is what is currently taking place with the CSLR essentially guaranteeing the investment returns of claimants. This is another key reason for the FY26 levy blow-out.

- **The impact on the personal financial advice sub-sector:** It is important to point out that when discussing the original design of the scheme it was anticipated that levies would be so low that Treasury suggested a minimum levy threshold of \$1000 to avoid licensees being sent levy notices for immaterial amounts. In its proposal paper issued in July 2021 Treasury highlighted that the purpose of the scheme's capital reserve was to fund any shortfall where annual levies provided for a particular sub-sector were insufficient to meet sub-sector outlays during the claim year. It stated that special levies should be limited to the extent possible to minimise disruption to industry activities and planning and referred to special levies being a key funding mechanism to fund claims following a 'black swan' event. The scheme was never designed to have to impose special levies year on year on the same sub-sector. The current design of the scheme makes it impossible for firms to plan and budget.

A key principle when considering high-level options should be the impact on the personal financial advice sub-sector if it is levied again for the FY26 levy blow-out. The personal financial advice sub-sector has already paid a minimum levy of \$100 per licensee plus \$1,186 per financial adviser for the FY25 levy and is expected to be levied \$100 per licensee and \$1295 per financial adviser for FY26. This is on top of ASIC Industry Funding Levy for the personal financial advice sub-sector of \$1500 per licensee and \$2,691 per adviser for FY24 and an estimated levy of \$1500 per licensee and \$2,314 per adviser per adviser for FY25. Because many personal financial advice licensees fall within other ASIC Industry Funding Model sub-sectors a broad-based levy will impact these licensees on top of their FY26 CLSR levy. For example, a SIAA member firm that provides personal financial advice may also fall within the following sub-sectors:

- Managed discretionary account providers
- Margin lenders
- Securities dealers
- Large securities exchange participants.

We are concerned about the levies acting as a barrier to entry to new entrants to the personal advice profession. New entrants are faced with significant levies before they raise any revenue. We are also concerned that increasing levies will result in increased numbers of financial advisers leaving the industry. In addition to the CSLR and ASIC industry funding levy our member firms are subject to an increasing level of costs including ASX fees and AFCA fees. Our members are experiencing increasing operating costs across the board with service inflation resulting in higher staff and vendor costs. Our member firms are also subject to increasing legal, compliance and information technology costs of complying with increasingly complex and onerous regulatory obligations as well as regulatory reforms resulting from the DBFO package. In addition, firms who are Clearing and Settlement Participants are incurring significant costs in preparing for CHES replacement. These ballooning and unsustainable costs will be passed on to consumers thereby increasing the costs of advice and making it less accessible.

- **The role of professional indemnity insurance:** Currently Professional Indemnity (PI) insurance does not respond in any meaningful way to complaints involving the failure of financial advice firms. During consultations on the design of the scheme, we pointed out that the scheme design excluded recognition of ASIC's role in ensuring companies have sufficient capital adequacy and appropriate PI insurance to meet their internal and external dispute compensation obligations. We highlighted at the time that it was vital to understand the source of unpaid determinations both to reduce the risk to consumers of unpaid determinations and clarify if the design of the CSLR was actuarially sound, and also noted that the Minister had announced that the government would consult on proposals to enhance the effectiveness of PI insurance in responding to compensation claims to ensure that the scheme truly operated as a scheme of last resort. Unfortunately, that consultation never proceeded despite our strong view that consultation on the effectiveness of PI insurance needed to take place before the CSLR legislation was passed, given its importance in clarifying the source of unpaid determinations and reduction of risk to consumers. To date, ASIC has not conducted a review of the level of PI insurance held by personal advice firms and it is not clear what role PI insurance has played in the high-profile collapses that have occurred. There is a lack of transparency on this issue. The current scheme is not operating as a true scheme of last resort. PI insurance should operate as the first line of defence so that the CSLR is truly a last resort for uncompensated losses. The scheme is not operating as intended because PI insurance is not responding to claims in the way envisioned during the scheme's design. Those firms who have obtained an appropriate level of PI cover and are paying the relevant premiums are essentially paying for those firms that have not obtained appropriate PI cover. A small group of financial advisers has been left with a huge levy to pay for failures to which PI insurance has not responded.
- **The National Guarantee Fund:** Market Participants providing personal financial advice to retail clients are liable under the CSLR. However these entities already contribute to a compensation scheme run by the National Guarantee Fund, which currently holds over \$120 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.

Question 2

Are there any matters the Minister should not have regard to when considering these options?

We strongly recommend that the Minister should not have regard to any matters when considering these options. The current scheme cannot continue in its current form without significantly impacting on the financial viability of providing personal financial advice to retail clients. We consider that everything should be on the table to deal with this issue and we encourage the Minister to consider matters beyond the options discussed in the Consultation Paper as none of them are ideal.

Question 3 Is ‘repeatability’ an important consideration?

It is not sustainable for special levies to be imposed year after year, particularly on the same sub-sector. In that regard, repeatability is not only not an important consideration, it is an imposition of a flawed scheme design year after year. A scheme designed to protect consumers should not render a sub-sector unviable, which repeatability will do. 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.

Taking no action

If the estimate for future years was for a small amount, the Minister could consider taking no action and rolling the unpaid amounts over to the following year. Given the sheer scale of the estimate for future years and, due to the flawed design of the scheme, taking no action means that once the scheme has run out of money claimants are not paid their compensation which places an unfair burden on individual consumers.

Spreading compensation over time

Spreading compensation over time will not fix the underlying problem of unsustainable levy amounts and will result in claimants suffering delays in payments of compensation. It will also cause administrative complexity and increase CSLR administrative costs that in turn flow into higher levies on the leviable entities. It will also have an ongoing impact on the viability of the personal financial advice sub-sector.

Special levy for just the primary sub-sector

As discussed, imposing a special levy just on the personal financial advice sub-sector is not sustainable. It will result in that sub-sector being hit by a double levy. We do not agree with the suggestion that hitting the personal advice sub-sector with a double levy will signal to that industry the cost of misconduct and encourage industry self-regulation. We agree with the Consultation Paper that the expectation that a double levy would reduce future claims relies on there being clear and effective mechanisms by which a sub-sector could detect and deter poor practices. The potential for this is limited as the sub-sector is not primarily responsible for its own regulation. More importantly, our members are not regulators and possess none of ASIC’s powers to supervise or enforce breaches of the law. Our members also have no control over ASIC’s resourcing decisions as to what complaints it will investigate. This means that a personal financial advice licensee who has lodged a breach report in relation to misconduct it has observed at another licensee may end up being liable for CSLR levies to pay for investor losses arising from that same misconduct due to a decision by ASIC not to investigate that report.

ASIC has significant powers to deal with misconduct but tends to not act until after consumers have been negatively impacted, despite the personal financial advice sub-sector frequently bringing to ASIC’s attention suspected misconduct. As the regulator, ASIC has the power to detect and deter poor practice and its role needs to be considered when assessing the sustainability of the scheme.

By way of example, on 19 September 2022 the Federal Court of Australia imposed a penalty of \$7.2 million plus \$800,000 in costs against Dixon Advisory. The court identified 53 occasions between October 2015 and May 2019 where Dixon Advisory was the responsible licensee of six authorised

representatives who failed to act in the best interest of eight clients in relation to advice in relation to the US Masters Residential Property Fund that was the basis of the clients' losses. At the Senate estimates hearing on 4 June 2024 ASIC confirmed it was investigating Dixon Advisory between 2015 and 2019, however, ultimately decided not to take any action against the financial advisers. ASIC did not suspend the AFSL of Dixon Advisory until 19 April 2022, nearly seven years after ASIC commenced its investigations.

Imposing a double levy on the personal advice sub-sector is fundamentally unfair.

Special levy for several sub-sectors

Imposing a special levy on several sub-sectors recognises the benefits of the CSLR to the financial sector more broadly by strengthening trust and promoting consumer participation in the system. These benefits accrue to all industry participants in the financial system. This approach spreads the financial burden and limits the impact on the financial viability of a single sub-sector. We consider that to be equitable the costs must be spread amongst the largest number of sub-sectors and levy payers as possible.

However, we note that any decision in relation to how the amount exceeding the cap should be dealt with sets a precedent for the future. The scheme needs to be redesigned so that significant amounts exceeding the sub-sector cap do not arise year after year.

Question 4

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

The most appropriate option for dealing with the FY26 levy blow-out is to impose a special levy on a large number of sub-sectors under the ASIC Industry Funding Model that spreads the cost burden as widely as possible. We do not agree that the financial advice sub-sector should be levied again – this sub-sector should be excised from the burden of the special levy.

Question 5

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

The benefit of imposing a special levy on a broad array of sub-sectors is two-fold. First of all, it is the most likely to result in claims being paid up to the compensation cap in a timely manner which benefits affected consumers. Secondly, it has the smallest impact on the viability of an individual sub-sector as a broad-based levy should result in each entity only being required to contribute a small amount.

Question 6

Is your preferred option repeatable if necessary in the future?

We comment further below on changes that are needed to the design of the scheme to ensure that the need for special levies is reduced as the scheme is currently unsustainable in its current form. We therefore make the point that repeatability should not be countenanced in any form given the

impact it will have and a redesign of the scheme is the only outcome that will ensure the scheme can operate in the future.

Question 7

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

Our preferred option is not a combination of the high-level options as this would most likely result in a short-fall. Spreading compensation over time would be complex and costly for the scheme to administer. It continues the challenge of licensees and advisers being unable to budget for the cost of the CSLR levy and will continue to hinder new entrants joining the profession of financial adviser. This will increase the cost burden on industry.

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

We note that options for a special levy not just on the primary sub-sector are broad and that conceptually, the Minister may apportion costs to any of the 52 sub-sectors in ASIC's Industry Funding Model, but that practically a special levy can only be collected from among the 36 sub-sectors with one or more AFCA members.

We recommend that one of the important changes that must be made to the scheme is to expand the list of leviable entities to all 52 sub-sectors that can be practically levied. This reflects the fact that the sector benefits as a whole from the trust and confidence the scheme provides to consumers. Because the consumer losses that are driving the levies are an industry-wide issue, the scheme must be funded by all industry participants.

As regards FY26, the special levy must be levied as broadly as possible upon those entities that are leviable under the provisions.

Capturing a sub-sector connected to the underlying conduct

The overwhelming proportion of the costs of the scheme are product-driven. Failed or poorly performing managed investment schemes are the key driver of the claims coming to the scheme, including pre-CSLR complaints. While the CSLR explicitly excludes managed investment schemes, claims from investors in failed or poorly performing managed investment schemes have been included in the scheme. We support an approach that assigns a substantial part of the excess for FY26 to the responsible entity sub-sector to reflect that managed investment scheme failures are a key driver of the CSLR costs.

In the re-design of the CSLR, responsible entities must be included in the scheme as a primary sub-sector with its own \$20 million cap. AFCA determinations that result from the failure or poor performance of a managed investment scheme must be attributed to this new sub-sector in a way that sensibly reflects their impact on the consumer's loss and the new sub-sector levied accordingly.

Question 8

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

While scheme levies are not meant to imply any collective responsibility of the sub-sector for the relevant conduct, the Minister cannot ignore the drivers behind the claims being brought to the scheme. Previous calls for managed investment schemes to be included in the CSLR reflected the history of significant consumer losses arising from these products. If compensation for losses from these schemes continue to be included in the CSLR, managed investment schemes must be included as a primary sub-sector in any re-designed scheme and a substantial part of the FY26 special levy must be assigned to responsible entities.

Question 9

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

For FY26 there is a substantial amount of evidence available that details the reasons behind the Dixon Advisory liquidation and the collapse of the United Global funds. This evidence can be obtained from the significant work undertaken by ASIC as well as AFCA determinations.

Capturing 'large' entities

Question 10

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

We consider that the basis of calculating a levy should be as simple as possible. A levy that is based on revenues or profits is complex and costly for ASIC to administer. Any additional costs incurred by ASIC in administering the levy will simply be passed on to other leviable entities.

Essentially a levy that is imposed on as large a number of entities as possible should result in each leviable entity being charged a smaller amount. This would obviate the need to target a special levy on a sub-sector based on its capacity to pay.

Question 11

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

We have no comment on this question.

Question 12

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

We have no comment on this question.

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

The CSLR has been designed to provide compensation to retail, not wholesale, clients who have received a determination from AFCA that is unpaid. That was the basis of the scheme.

From its commencement AFCA has accepted complaints from wholesale clients. It has publicly stated that it will continue to do so notwithstanding that it was never meant to be a complaints resolution scheme for wholesale clients who have the means to seek redress from the courts.

The ability of AFCA to accept complaints from wholesale clients has the potential to impact significantly on the sustainability of the CSLR. While it is currently unclear exactly how many wholesale client complaints have flowed through to the scheme, there is no doubt that claims arising from wholesale product failures will end up there or have already done so.

The revised estimate for the FY26 levy attributes \$37,372,000 in claims from the collapse of United Global Capital. United Global Capital recommended that clients invest in various related-party companies and funds including the UGC Global Alpha Fund that was a product limited to wholesale only investors. It remains to be seen how many complaints against United Global Capital relate to wholesale products.

The CSLR does not have the ability to reassess the merits of AFCA determinations. Accordingly, even though the scheme is meant to compensate retail not wholesale clients, the scheme is required to pay compensation to wholesale clients if their claims result in an unpaid AFCA determination. This is an unfair result for firms required to contribute to the scheme as only firms providing personal financial advice to retail clients are compelled to be members of AFCA.

We consider that when the scheme is re-designed the government must also amend AFCA's operating rules to ensure that it is unable to accept complaints from clients that have been classified by the relevant licensee as wholesale. Otherwise, complaints from wholesale clients will flow through to the CSLR. If this does not occur, the CSLR must be re-designed so that levies are not limited to 'retail-facing' sub-sectors but include those sub-sectors who provide services and products to wholesale clients. This recommendation may appear to be unfair. However, it reflects AFCA's approach to accepting wholesale client complaints.

Limiting the levies to 'retail-facing' sub-sectors may also encourage licensees to cease providing products and services to retail clients.

Spreading equally

There is no good option on how to distribute the special levy amongst the five options presented in the Consultation Paper. Each option suffers from a variety of issues that makes it unfair to various sub-sectors.

Spreading by population

Imposing a special levy based on population contains serious flaws in its current format. For example, it equates one financial adviser with one provider of margin lending services.

Spreading by revenues or profits

A levy that is based on revenues or profits is complex and costly for ASIC to administer. Any additional costs incurred by ASIC in administering the levy will simply be passed on to other leviable entities.

Spreading by regulatory effort

We do not support spreading the special levy by apportioning it on the basis of the regulatory effort applied to each sub-sector as reflected in ASIC's most recent Industry Funding Model determination. We have issues with the ASIC Industry Funding Model and how ASIC apportions its costs amongst the various sub-sectors. For example, in the past it has apportioned significant costs to the personal financial advice sub-sector which we consider should have been apportioned to the general financial advice sub-sector. There is also a lack of transparency as to how ASIC apportions its costs.

Question 13

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

We consider that this option is the least worst of the five options presented.

Question 14

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

While imposing a special levy on all retail-facing sub-sectors is the least worst of the five options any apportionment must be based on the following:

- The government must pay an amount that accords with the remaining 9 months of the first year of the operation of the scheme. This reflects the original version of the scheme that was presented to industry. It also serves as a proxy for the failure of the regulator to deal with the Dixon Advisory and UGC matters in a more timely fashion.
- The personal financial adviser sub-sector must be excised from the levy to account for the fact that the entities in this sub-sector are already required to pay a \$20 million levy. Many licensees in this sub-sector will also be impacted by a special levy imposed on all retail-facing sub-sectors as they fall within other sub-sectors such as corporate advisers, securities dealers and managed discretionary account providers. This will result in these licensees being required to pay a special levy in addition to the personal financial advice sub-sector levy.
- Responsible entities should be required to pay a substantial portion of the special levy to reflect the fact that failure of managed investment schemes is a key driver of the FY26 levy blow-out.
- The scheme must be redesigned to ensure that special levies in future result from a 'black swan' event rather than business as usual. The imposition of a special levy should not be a something that happens year after year.

Question 15

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

We have no comment on this question.

Options outside the current legislative framework

Question 16

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

Fundamental changes must be made to the CSLR and AFCA (that funnels complaints into the scheme) to make the scheme sustainable and fair and to reduce the possibility of special levies in future. Once the Minister has dealt with the FY26 levy blow-out, consultation is needed with industry to re-design the scheme. This process must also be informed by the findings of the Treasury post-implementation review of the scheme, while taking into account that the full extent of the Shield and First Guardian collapses were not as well understood by industry at that time.

Changes to the scheme must involve reform of the leviable sub-sectors. Importantly, a RIS must be provided so that industry is aware of the estimated costs of the scheme and who will pay them. We make the following recommendations:

- The number of leviable sub-sectors must be increased to align with the circumstances giving rise to claims. Forcing financial advisers to pay for the tsunami of claims resulting from the collapse of Shield and First Guardian is neither fair nor sustainable and does not reflect the fact that these collapses are an industry-wide problem.
- If losses resulting from the failure or poor performance of managed investment schemes are to be accepted by the CSLR, responsible entities of managed investment schemes must be included as a primary leviable sub-sector with its own \$20 million cap. AFCA determinations that result from the failure or poor performance of a managed investment scheme must be attributed by the CSLR to the responsible entity sub-sector in a way that sensibly reflects their impact on the consumer's loss and the responsible entity sub-sector levied accordingly.
- The payment of compensation to wholesale clients is not the intended objective of the CSLR. The government must amend AFCA's operating rules to ensure that it is unable to accept complaints from clients that have been classified by the relevant licensee as wholesale. Otherwise, complaints from wholesale clients will flow through to the CSLR. If this does not occur, the CSLR must be re-designed so that levies are not limited to 'retail-facing' sub-sectors but include those sub-sectors who provide services and products to wholesale clients.
- An essential component of any redesign of the CSLR involves placing significant checks and balances on AFCA. In its current form, AFCA is not fit for purpose. There is no right of appeal for member firms, no oversight mechanism, and no accountability in relation to AFCA determinations, which in turn flow to payments that the CSLR must make. AFCA prides itself on making 'fair' decisions, yet the personal financial advice subsector has no recourse when those decisions are flawed. This is at the heart of the shaky foundations of the CSLR.

- A review of how AFCA determines compensation amounts must be conducted and an independent expert retained to review the methodology AFCA uses to determine compensation to claimants involved in large collapses that are likely to impact the CSLR.
- The scheme re-design needs to take into account the fact that currently PI insurance does not respond in any meaningful way to complaints involving the failure of financial advice firms. The scheme is not currently a scheme of last resort – it is a scheme of first resort.
- The design of the scheme should include a mechanism that allows for the voice of those who are financially liable to pay for it to have input, either through industry appointment to the board or an advisory/consultative committee.
- AFCA’s fees should not be paid for by industry but should be met by government.
- Industry should not be required to pay ASIC’s administration fees to issue levy invoices.

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

A handwritten signature in black ink, appearing to be 'J Fox', written in a cursive style.

Judith Fox
Chief Executive Officer