



Australian Government  
The Treasury



**Ministerial Submission**  
MS22-001739

**FOR ACTION - Compensation scheme of last resort (CSLR) - possible impact of Dixon Advisory**

**TO:** Assistant Treasurer and Minister for Financial Services - The Hon Stephen Jones MP  
**CC:** Treasurer - The Hon Jim Chalmers MP

**TIMING**

Urgent. Your response by Tuesday, 16 August 2022 is required to finalise the Bills to establish the compensation scheme of last resort (CSLR) ahead of their scheduled introduction in week 3 of the 2022 Spring sittings.

**Recommendation**

- That you note the recent collapse of Dixon Advisory exposes the CSLR to higher costs than initially estimated.

**Noted / Please discuss**

s 22



Signature	Date: / /2022
-----------	---------------

1 page has been removed from this document as irrelevant information under section 22 of the FOI Act

## KEY POINTS

s 22

- In recent weeks, AFCA has experienced a significant increase in the number of complaints it is receiving against Dixon Advisory & Superannuation Services Pty Ltd (Dixon Advisory). This increase in complaints will lead to additional costs, particularly for firms subject to the one-off levy.
  - As at 12 August 2022, AFCA has received 1,092 complaints against Dixon Advisory from former clients. 967 of these complaints have been lodged with AFCA since 3 August 2022, following an ASIC media release encouraging former Dixon Advisory clients to provide complaints with AFCA in order to preserve their eligibility under a possible future CSLR.
  - Further background on the collapse of Dixon Advisory, including ASIC action, is at [Attachment A](#).
- AFCA has undertaken a light-touch review of a sample of 75 of Dixon Advisory complaints received since 3 August 2022 to better understand the nature and value of the complaints. Within this sample, all complaints related to the provision of personal financial advice; and the average amount claimed across the sample was greater than the CSLR compensation cap of \$150,000.
  - AFCA’s review of these complaints did not involve assessing the validity of the complaints, or establish any likelihood that the complaints would be found in favour of the complainant if they were brought to determination.
- All complaints provided to AFCA until the date the CSLR Bills are introduced into Parliament will form part of the backlog of accumulated claims. The total notional value of the backlog of accumulated claims is currently valued at approximately \$180 million, of which approximately \$160 million are attributable to Dixon Advisory.

- The scale of Dixon complaints is likely to sharply increase the one-off levy payable by the ten-largest banking and insurance firms.

s 22

- That estimate is now significantly understated due to the Dixon Advisory complaints.

s 2  
2

s 22

s 22

- It is possible, though unlikely, that complaints against Dixon Advisory provided to AFCA in the coming weeks will lead to the value of accumulated claims notionally exceeding \$250 million.

s 22

- The complaints against Dixon Advisory also expose the Government to increased costs in the first levy period (2023-24).
  - Treasury will work closely with the CSLR operator and AFCA to ensure that costs directed towards the Commonwealth in contributing to scheme costs in the first levy period are grounded in actuarial principles as required in the legislation.
- The complaints against Dixon Advisory will also expose the financial advice sector to the possibility of higher estimated costs in the coming years, representing a sensitivity for this sub-sector.
  - In making its yearly cost estimates against each sub-sector, the authorised scheme operator will have regard to a range of information, including the collapse of Dixon Advisory in respect of considering probable costs attributable to the financial advice subsector.

- We do not recommend that you make any changes to the current design of the CSLR. The scheme is appropriately calibrated to effectively respond to the collapse of Dixon Advisory, and support the ongoing financial sustainability of the scheme in the longer-term.

s 22

Clearance Officer  
Robb Preston  
Assistant Secretary  
Financial System Division  
12/08/2022

Contact Officer  
s 22  
Director (A/g), Redress unit  
Ph: s 22

## CONSULTATION

---

Law Division

## ATTACHMENTS

---

A: Background to the collapse of Dixon Advisory and ASIC action

s 22

**ATTACHMENT A – BACKGROUND TO THE COLLAPSE OF DIXON ADVISORY AND ASIC ACTION**

---

- On 4 September 2020, ASIC commenced civil penalty action in the Federal Court of Australia against Dixon Advisory & Superannuation Services Pty Ltd (Dixon) (20-207MR).
- On 9 July 2021, ASIC and Dixon entered into a conditional agreement to resolve ASIC’s civil penalty action (21-167MR). The effect of the administration was to stay the proceedings. ASIC will be seeking leave to prosecute the proceedings to finality on the basis of the agreement reached with Dixon prior to its administration. ASIC has requested the Administrators to consent to the continuation of the proceedings. If they do not, ASIC will apply for leave to continue the proceedings. ASIC does not expect the Administrators to contest the court making the orders that ASIC intends to seek against Dixon.
- On 19 January 2022, Dixon voluntarily appointed Administrators. (See the ASX announcement by their listed parent company E & P Financial Group Limited (EP1) which notes actual or potential liabilities from: multiple class actions, AFCA complaints and penalties agreed with ASIC.)
- On 3 August 2022, ASIC published a media release noting that former Dixon clients may be eligible for compensation under the compensation scheme of last resort (CSLR), but that providing a complaint to the Australian Financial Complaints Authority (AFCA) is a necessary step in order to preserve their possible eligibility under a potential future CSLR.
- Following entering into voluntary administration, ASIC has been engaged in a range of work including;
  - Suspending Dixon’s financial services licence (22-094MR);
  - Engagement with Evans and Partners Pty Ltd (EAP - a related entity to Dixon and subsidiary of EP1), s 47G(1)(a) [REDACTED] s 47G(1)(a) [REDACTED]
  - Engagement with the Administrators and AFCA about Dixon’s AFCA membership and possible claims under a prospective compensation scheme of last resort (CSLR) by Dixon clients.
- The majority of creditors of Dixon are likely to be former clients. ASIC does not know the total number or quantum of expected claims. However, ASIC noted that;
  - ASIC’s proceedings focused on advice provided by Dixon on the ASX listed US Masters Residential Property Fund (URF) and URF related products. ASIC understand that historically the URF was majority owned by DASS clients and URF’s market capitalisation has fallen from \$500m in December 2018 to approximately \$100m in July 2022.
  - The Administrators have indicated approximately 6,000 former Dixon clients may have claims. They received 880 proxies for the purpose of the 1st creditors meeting and the 2nd creditors meeting is scheduled to occur before 17 August 2022. Administrator’s website link - Insolvency (pwc.com.au).

- The following article about the class actions indicates 1,300 clients registered their interest with Shine Lawyers and Piper Alderman with estimated claims between \$278m-\$463m: *Shine Lawyers wins battle to run \$463M Dixon Advisory class action - Lawyerly*.
- Recent updates from AFCA indicate they have approximately 1,092 unresolved AFCA complaints which have been lodged and are on pause in accordance with AFCA's policy about firms in administration. There have been no AFCA determinations made in relation to Dixon complaints, but complaints that have been considered and resolved (at earlier stages) have favoured clients.
- ASIC has previously engaged with the Administrators about writing to clients about lodging complaints with AFCA, so as to preserve potential claims to compensation under a prospective CSLR. The Administrators have refused to do so.
- Following the Administrator's decision, ASIC has decided that it is appropriate that ASIC communicate to DASS clients—noting both the complexity and the uncertainty of outcomes.



Australian Government  
The Treasury



**Ministerial Submission**  
MS23-000300

**FOR ACTION - Compensation Scheme of Last Resort (CSLR) and s 22 [redacted]  
[redacted] – Timing of the reintroduction of legislation and proposed design changes**

TO: Assistant Treasurer and Minister for Financial Services - The Hon Stephen Jones MP  
CC: Treasurer - The Hon Jim Chalmers MP

**TIMING**

**Urgent:** By 17 February 2023 to facilitate timely finalisation of the CSLR s 22 [redacted] legislation packages for reintroduction in March 2023.

**Recommendation**

- That you agree to the reintroduction of CSLR s 22 [redacted] as an Autumn (T-status) package in the House of Representatives, having regard to the matters and timing implications outlined at Attachment A, and to discharge t s 22 [redacted] and CSLR Bills that are currently in the Senate.

**Agreed / Not agreed**

- That you indicate your agreement in Attachment B to changes in the design of the CSLR for inclusion in the Government’s reintroduced legislative package.

**Agreed / Not agreed**

s 22

2 pages have been removed from this document as variously exempt material under sections 45, 47C and 47G(1)(a) and 1 page has been removed as irrelevant material under section 22 of the FOI Act

Signature	Date: / /2023
-----------	---------------

## KEY POINTS

---

- Following engagements with your Office, we are preparing the CSLR <sup>§ 22</sup> legislation for reintroduction and passage in March 2023. We understand you are minded to continue to package CSLR <sup>§ 22</sup> and we are progressing on that basis. We outline below the path forward to support this timeframe, seek your agreement to legislation changes, and advise of financial impacts, risks and sensitivities and next steps.

### *Reintroduction of legislation in March 2023*

- Only targeted changes can be made to the CSLR <sup>§ 22</sup> legislation if reintroduction in March is to be achieved.
  - The Constitution requires that the main CSLR Bill be reintroduced into the House of Representatives as it contains a standing appropriation provision.
  - The Financial Services Compensation Scheme of Last Resort Levy Bill 2022 (Levy Bill), the Financial Services Compensation Scheme of Last Resort Levy (Collection) Bill 2022 (Collection Bill) and the <sup>§ 22</sup> remain before the Senate.
  - For the best chance of passage of the legislation in March, we suggest that the CSLR Levy and Collection Bills, <sup>§ 22</sup> be discharged and re-introduced along with the main CSLR Bill in the House of Representatives.
- The CSLR implementation timeframe is outlined at [Attachment A](#). We have also included Winter (T- and A-status) timeframes so that you can see the impact of any delayed passage.

### *CSLR design changes*

- Your Office has advised that you have agreed with the Treasurer four changes to the design and operation of the one-off levy and the first levy period, as follows:
  - One-off levy payers: The ten largest prudentially regulated financial firms (excluding superannuation trustees and health insurers), as determined by their 2021-22 total income as reported to the ATO, will be required to pay a one-off levy to address the backlog of accumulated complaints; and
  - Payment by instalment: These financial firms will have the option to pay their levy in a lump sum or in two equal instalments, paid in each of the first two levy periods (2023-24 and 2024-25).
  - Maintain the backlog cut-off date: The cut-off date applying to the backlog of accumulated complaints will be the same as applied under legislation introduced into Parliament last year, that is, 7 September 2022. Under this arrangement, the financial exposure of one-off levy payers with respect to the backlog will remain unchanged.
  - Shorten the first levy period: The first levy period would commence on a date determined by the Minister (likely 1 December 2023) and end on 30 June 2024.



: Under this arrangement, the Commonwealth would fund scheme costs for the first 7 months under a 1 December 2023 commencement.

- In addition, based on advice from ASIC and AFCA received after the 2022 Bill was settled we have identified four further issues as being critical to support the scheme's implementation. We recommend that you agree to progress the following issues as part of finalising legislation for reintroduction in March 2023:
  - ASIC default notices power: Provide ASIC a default notices power, similar to the power under the ASIC Industry Funding Model (IFM), to issue levy notices to leviable firms in circumstances where the leviable entity fails to provide information (or where that information is not adequate).
  - Backlog shortfall collections: Expand the scheme operator's ability to include any shortfalls in the one-off levy as part of its calculation of annual levy estimates for the third and fourth levy period. This would ensure the backlog shortfall can be collected once there is a higher level of certainty about its value.
  - AFCA cost recovery: Expanding the existing AFCA fee provisions to enable AFCA to recover its total costs associated with assessing complaints supporting the operation of the CSLR. In particular, this would enable recovery of the 'user charge' element of AFCA's fee schedule which is separate to the standard 'complaint fee'.

s 45

- We recommend that you agree to all eight proposed changes in Attachment B.

s 45

- These two sets of issues are not required to be addressed ahead of the scheme's commencement. These issues require further consideration that is not possible under a March 2023 reintroduction timeframe.
- We will provide further advice on these issues in due course. Further background on these issues is at Attachment C.

s 22

*CSLR financial impact*

- The budget cost of implementing the CSLR is likely to increase by \$1.0 million, from \$14.6 million to \$15.6 million over the period 2021-22 to 2023-24. The scheme is to be fully industry funded from 2024-25 onwards. These costs are indicative only and have not been agreed with the Department of Finance.
  - This likely increase is a result of increased costs to establish and run the scheme until the end of 2023-24 and is offset by lower scheme operating costs flowing from the proposed shorter first levy period. More detail on these costs are in [Attachment D](#).
- Given the timeframes to finalise the legislation for reintroduction in March 2023, we will be unable to agree revised costs with the Department of Finance. Accordingly, the financial impact as disclosed in the explanatory memorandum when the Bills were introduced into Parliament last year is proposed to also be included in the explanatory memorandum for the newly finalised Bills.
  - In line with guidance from Finance, we propose to make it clear in the Explanatory Memorandum that the estimated financial impacts of the scheme are indicative and are dependent on a number of key factors, including scheme start date and AFCA complaint consideration processes and related timeframes.
- In finalising the legislation package, we will request that you seek the Prime Minister's agreement to reintroduce the CSLR legislation with costs to be agreed at a later time between Treasury and the Department of Finance.

*CSLR risks and sensitivities*

- As a result of the change in the CSLR taxation reference year to 2021-22, the identities of the one-off levy payers under this revised design will not be known until the Report of Tax Entity Information is published by the ATO, which is expected to be around August 2023.
  - The ATO have advised that due to tax secrecy laws they are unable to share information with Treasury or your Office for the purpose of confirming the identity of the one-off levy payers.

s 45

- The major banks, general insurers and life insurers who will be captured by the one-off levy will likely re-prosecute their previous objections.
- Your Office has advised that you and your Office will lead consultation with these banks, general insurers and life insurers in advance of the reintroduction of the CSLR legislation.
  - Given the uncertainty in relation to the identity of the one-off levy payers in advance of the release of ATO data, we recommend that you engage the relevant industry associations as well as the top 15 firms based on the averages of the last three years of tax data. Material which may assist in your engagements is at Attachment E.
- Subject to the passage of CSLR legislation in March 2023, advice licensees and other licensees within the scope of the CSLR will receive two separate ASIC levy invoices in 2023-24 – an ASIC IFM invoice in late January 2024 (as part of their standard IFM levying arrangements and without any fee relief) and then separately a CSLR invoice in April/May 2024 to fund the scheme in 2024-25. In addition, firms that are also one-off levy payers will receive a third invoice in October/November 2023.
  - ASIC requires 12 months from the date the CSLR Regulations are made to develop the IT system to administer the CSLR levy framework, and, consistent with its approach under the ASIC IFM, will issue CSLR levy notices once the 15-day disallowance period applying to cost estimates has elapsed.

s 45

- This timeframe takes account of planned temporary increased capacity at AFCA and the CSLR operator to address this workload.

#### *Next steps*

- If you agree to progress CSLR and s 22 for reintroduction in March 2023, we will progress further briefing early in the week commencing 20 February 2023 seeking your agreement to:
  - the text of the Bills; and
  - write to the Prime Minister seeking his policy authority for the proposed design changes to the schemes, and agreement to introduce the Bills in the 2023 Autumn sittings with Category T status.
- We will continue to engage with your Office to progress the Bills for reintroduction.

Clearance Officer  
Robb Preston  
Assistant Secretary  
Financial System Division  
17/02/2023

Contact Officer  
s 22 – CSLR  
Ph s 22 Mob: s 22

s 22

## **CONSULTATION**

---

Law Division, Market Conduct Division, CFO Branch, Department of the Prime Minister and Cabinet, Department of Finance, the Australian Securities and Investments Commission (ASIC), Australian Taxation Office (ATO) and the Australian Financial Complaints Authority (AFCA).

## **ATTACHMENTS**

---

- A: CSLR – Legislation and commencement timeframes
- B: CSLR – Proposed design changes
- C: CSLR – Issues requiring further analysis
- D: CSLR – Financial Impact
- E: CSLR – Other relevant measures

CSLR – Legislation timing and impacts to the implementation of the scheme

The Table below outlines the interaction between legislative timeframes and the early implementation of the CSLR. The key implementation impacts flowing from the timing of passage, and the need to consider additional amendments to the legislation to support the effective implementation of the scheme, are outlined in the Notes to the table.

Activity	Proposed timeframe – Autumn T	Proposed timeframe – Winter T	Proposed timeframe – Winter A
<b>Ministerial approval of Bills/provisions for consultation</b>	By 17 February – Decision to progress minimal changes to existing legislation and to not consult publicly	By 10 March 2023	By 17 March 2023
<b>Possible public consultation on Bills/PAMs</b>	N/A	13 – 24 March (2 weeks)	20 March – 14 April (4 weeks)
<b>Post consultation and finalisation of legislation, parliamentary briefing documents and text approval MS</b>	To conclude by 21 February 2023	To conclude by 17 April 2023	To conclude by 8 May 2023
<b>Ministerial text approval of final Bills/PAMs</b>	By 28 February 2023	By 2 May 2023	By 23 May 2023
<b>Introduction of Bills/PAMs</b>	By 9 March 2023	By 11 May 2023 [Noting Budget week - this Bill would be competing with other high priority Bills]	By 1 June 2023
<b>Legislation passed (estimated)</b>	31 March 2023	22 June 2023	26 October 2023
<b>Regulations made</b>	25 May 2023	3 August 2023	7 December 2023
<b>Estimates made for:</b> • One-off levy • First levy period costs (Government funded)	4 September 2023	8 November 2023	13 March 2024
<b>Government funds received by CSLR operator</b>	24 November 2023	23 February 2024	24 June 2024
<b>Earliest Scheme Start</b>	1 December 2023 (7 months)	1 March 2024 (4 months)	1 July 2024
<b>Earliest One-off levy funds received (instalment 1)</b>	30 December 2023	19 April 2024	30 August 2024
<b>Earliest One-off levy funds received (instalment 2)</b>		1 July 2024	1 July 2025
<b>Estimates made for:</b> • Second levy period costs (industry funded) • One-off levy shortfall (if relevant)	1 February 2024	22 March 2024	20 August 2024
<b>Second levy period funding due date</b>	24 June 2024	2 September 2024	10 February 2025

**Notes:**

1. **Additional measures**: In addition to changes to the design of the one-off levy and the first levy period and related consequential changes, as noted in Attachment B, Treasury has identified four issues as being critical to support the scheme's early implementation and which we recommend that you agree to progress as part of finalising legislation for reintroduction in March 2023. As noted in Attachment C, there are other issues which are important to the scheme's longer-term operation, however, these issues are not required to be addressed ahead of the scheme's commencement and addressing them now would delay the reintroduction of legislation beyond March 2023.
2. **Duration of the first levy period**: The responsible Minister will have the ability to determine the commencement date of the scheme, with the first levy period commencing from on that date and ending on 30 June 2024 (2023-24 financial year). Under this arrangement, the Commonwealth will fund scheme costs for the first levy period of a duration shorter than one year (for instance, the first levy period would be 7 months long if it were to commence from 1 December 2023).
3. **Impact of enabling one-off levy payers to pay in instalments**: Enabling one-off levy payers to pay their levies in two equal instalments across two consecutive levy periods may affect the scheme's cashflow. Passage of the CSLR legislation in March 2023 would enable the timely payment of both one-off levy instalments early in the first levy period and ensure the scheme has the funding necessary to pay compensation as they flow into the scheme.
4. **Cut-off date for accumulated complaints**: The cut-off date that applied to the backlog of accumulated complaints under the legislation introduced into Parliament on 8 September 2023 is to be maintained – the cut-off date will continue to be 7 September 2022.
5. **15-day disallowance**: ASIC will issue invoices to levy payers following the lapsing of 15 sitting days from the time the estimate instrument is tabled, assuming no disallowance is attempted. The first one-off levy instalment would be received by the operator after the commencement of the scheme under all timing options.
6. **CSLR establishment**: The timeframes reflect that a minimum of 8-months from the passage of CSLR legislation is required to establish the scheme operator ready for scheme start. This time is needed to enable AFCA to establish the scheme operator (CSLR Co), set up scheme operations and IT systems and recruit staff. This also includes the time needed for the Minister to appoint the Chair of the scheme operator and to authorise the scheme.

Compensation scheme of last resort (CSLR) – Proposed design changes

Measure	As Introduced (Sep 2022)	Recommended Amendment	Treasury View	Agree
<b>AGREED CHANGES TO THE ONE-OFF LEVY</b>				
<i>[To be progressed as part of finalising legislation for reintroduction in March 2023]</i>				
<b>One-off Levy – cohort of levy payers</b>	The ten-largest prudentially regulated financial firms (excluding superannuation trustees and health insurers) with total incomes greater than \$6 billion in 2019-20 will be required to pay a one-off levy to cover pre-CSLR claims (the backlog) in proportion to their total income in 2019-20.	The ten-largest prudentially regulated financial firms (excluding superannuation trustees and health insurers) measured by their 2021-22 total income (as reported to the Commissioner of Taxation), will be required to pay a one-off levy to cover pre-CSLR claims (the backlog of accumulated complaints) in proportion to their total income in 2021-22.	<p>The reference year should be updated from the 2019-20 income year to the 2021-22 income year to reflect the most up-to-date public income information to ensure that the contributions of levied firms better reflect their current business operations.</p> <p>The removal of the \$6 billion income threshold is necessary as it is not possible to confirm the income threshold of the top 10 largest firms at this time.</p>	Yes / No
<b>One-off Levy – payment in instalments</b>	Financial firms must pay their one-off levy in a single, lump sum payment.	Financial firms will have the option of paying their one-off levy in two equal instalments, paid across the first two levy periods.	<p>A provision enabling the option for the financial firms to pay the one-off levy in two equal instalments would reduce the impact of the one-off levy on financial firms. This will not affect how the other levies (the annual or special levies) are required to be paid.</p> <p>Firms will continue to have the ability to pay their one-off levy in a single, lump sum payment should they wish.</p>	Yes / No

Measure	As Introduced (Sep 2022)	Recommended Amendment	Treasury View	Agree
<b>Backlog cut-off date – ‘accumulation recovery day’</b>	<p>‘Accumulation recovery day’ is defined as the day the Bill for the <i>Financial Sector Reform Act 2022</i> was introduced into the House of Representatives. Complaints made to AFCA before that day will form part of the backlog of accumulated complaints.</p> <p>As the Bill was introduced into the House on 8 September 2022, the backlog cut-off date is 7 September 2022.</p>	<p>Amend relevant provisions to maintain the backlog cut-off date of 7 September 2022 as it applied under the <i>Financial Sector Reform Bill 2022</i> when it was introduced into the House on 8 September 2022.</p>	<p>Under this arrangement, the financial exposure of one-off levy payers with respect to the backlog will remain unchanged.</p>	<p>Yes / No</p>
<b>Annual Levy – Duration of the first levy period</b>	<p>Levy period means a financial year starting on or after 1 July 2023. The duration of each levy period is 12 months (from 1 July to 30 June of the following year).</p>	<p>Amend relevant provisions to provide that the first levy period is to begin on a day to be determined by the responsible Minister (via a notifiable instrument) and end on 30 June 2024.</p>	<p>Subject to the passage of the Bill by the end of March 2023, it is expected that the first levy period would commence on 1 December 2023 and end on 30 June 2024. This amendment would not have any impact on the length of subsequent levy periods, which would continue to be from 1 July to 30 June of the following year.</p> <p>Under this arrangement, the Commonwealth will fund scheme costs for the first levy period, which will have a duration shorter than one year. For example, where the scheme commences on 1 December 2023, the first levy period would have a duration of 7 months.</p>	<p>Yes / No</p>



Measure	As Introduced (Sep 2022)	Recommended Amendment	Treasury View	Agree
<b>CHANGES CRITICAL TO THE EFFECTIVE IMPLEMENTATION OF THE SCHEME FROM COMMENCEMENT</b> <i>[Recommended to be progressed as part of finalising legislation for reintroduction in March 2023]</i>				
<b>One-off Levy – expand the ability to collect any backlog shortfall from the annual levy</b>	<p>Should collections of the one-off levy be insufficient to fund the backlog of pre-CSLR claims, the shortfall could be collected as part of the annual levy for only the second levy period in 2024-25 (not subsequent levy periods).</p> <p>It will be very difficult to make an accurate estimate of the shortfall at that time. AFCA expect determination of backlog claims to take around 18 months from July 2023, that is to around December 2024.</p>	<p>Amend relevant provisions enabling the CSLR operator to address the backlog shortfall at a time when it is better-informed of whether a shortfall will be experienced and its value.</p> <p>Amendments would be made to enable the operator to collect shortfalls against the backlog from attributable sub-sectors in the second (2024-25), third (2025-26) and/or fourth (2026-27) levy periods (as required).</p> <p>As the vast majority of the backlog relates to Dixon Advisory, any shortfall is likely to be collected from the financial advice sub-sector.</p>	<p>Extending the period for collection of the backlog (up to the fourth levy period) will enable the full backlog amount to be collected.</p>	Yes / No
<b>Levy Notices – ASIC default notices power</b>	<p>ASIC does not have the power to issue a levy notice to a leviable entity where the leviable entity does not comply with the CSLR information reporting requirements.</p>	<p>Amend relevant provisions to enable ASIC to issue default levy notices even where the leviable entity fails to provide information (or where the information provided is not adequate). This could be achieved by replicating the equivalent provision used in the collection of the ASIC Industry Funding Model (IFM) levy.</p>	<p>Without amendment, ASIC would be unable to issue a levy notice to an entity that has not submitted their CSLR metrics. This would result in less than the expected levy amount being collected to fund the CSLR.</p>	Yes / No

Measure	As Introduced (Sep 2022)	Recommended Amendment	Treasury View	Agree
<b>AFCA Cost Recovery – ensure full recovery of CSLR costs by AFCA</b>	AFCA may be prevented from fully recovering all the costs that they incur in assessing complaints potentially eligible to claim against the CSLR because the legislation does not allow for the recovery of AFCA’s “user charge” which may be charged monthly, quarterly or annually.	Amend the definition of “AFCA unpaid fees” and “AFCA accumulated unpaid fees” to enable the full recovery of fees and costs incurred under AFCA’s new funding model (that is, to cover both the “user charge” and the “complaint fee”) and to provide flexibility to cover potential future funding models.	AFCA should be able to recover its total costs associated with assessing complaints and supporting the operation of the CSLR.	Yes / No

s 45

s 47C

**ATTACHMENT C – CSLR – Issues requiring further analysis**

Compensation scheme of last resort (CSLR) – Issues that require further analysis to ensure effective longer-term operation

Measure	As Introduced (Sep 2022)	Recommended Amendment	Treasury View
<b>IMPORTANT FOR THE LONGER-TERM IMPLEMENTATION AND OPERATION OF THE SCHEME</b> <i>[Unable to be progressed as part of finalising legislation for reintroduction in March 2023]</i>			

s 45

s 47C

## Compensation scheme of last resort (CSLR)

This document has been developed to support ongoing stakeholder engagement on the CSLR.

s 22





Australian Government  
The Treasury

Ministerial Submission  
MS23-000379

**FOR ACTION - s 22** Compensation Scheme of Last Resort

**TO:** Assistant Treasurer and Minister for Financial Services - The Hon Stephen Jones MP  
**CC:** Treasurer - The Hon Jim Chalmers MP

**TIMING**

By 5.00pm on Tuesday, 28 February 2023 to meet the Legislation Approval Process and printing timeframes for introduction in Week 3 of the 2023 Autumn sittings.

**Recommendation**

s 22

- That you **approve** the text of the Treasury Laws Amendment (Financial Services Compensation Scheme of Last Resort) Bill 2023 ([Attachment D](#)), Financial Services Compensation Scheme of Last Resort Levy Bill 2023 ([Attachment E](#)), Financial Services Compensation Scheme of Last Resort Levy (Collection) Bill 2023 ([Attachment F](#)) and the accompanying Explanatory Memorandum relating to the Bills at ([Attachment G](#)) for introduction into Parliament

**Approved / Not approved**

s 22

21 pages have been removed from this document as exempt material under section 46(c) and 2 pages have been removed as irrelevant material under section 22 of the FOI Act

- That you sign the draft letter to the Prime Minister (Attachment J) <sup>s 34(3)</sup> [redacted] and to discharge the Financial Services Compensation Scheme of Last Resort Levy Bill 2022, Financial Services Compensation Scheme of Last Resort Levy (Collection) Bill 2022 and <sup>s 22</sup> [redacted] from the Senate notice paper.

Signed / Not Signed

Signature	Date: / /2023
-----------	---------------

**KEY POINTS**



- The Compensation Scheme of Last Resort (CSLR) is in response to recommendation 7.1 of the Supplementary Final Report of the Review into dispute resolution and complaints framework.
  - The CSLR will be implemented by the Treasury Laws Amendment (Financial Services Compensation Scheme of Last Resort) Bill 2023), Financial Services Compensation Scheme of Last Resort Levy Bill 2023 and Financial Services Compensation Scheme of Last Resort Levy (Collection) Bill 2023 (CSLR Bills).
- You agreed to reintroduce the <sup>s 22</sup> [redacted] CSLR legislation into Parliament in week 3 of the 2023 Autumn sittings to be debated in cognate (MS23-000300 refers).
- The <sup>s 22</sup> [redacted] CSLR bills that were previously introduced in the 2022 Spring sittings will need to be discharged from the notice paper currently before the Senate, these bills are:
  - Financial Services Compensation Scheme of Last Resort Levy Bill 2022;
  - Financial Services Compensation Scheme of Last Resort Levy (Collection) Bill 2022; and
- An overview of the Bills is at **Additional Information**.

<sup>s 2</sup> [redacted]

- Prior to introduction of a Bill into Parliament, all approvals must be in place as outlined in the table below.

Approval Type	Status	Comments
Initial policy approval	s 22 CSLR: In place	Letter from the Prime Minister to the Assistant Treasurer dated 1 August 2022 (MS22-052664 refers)
Additional policy approval	s 22	[Redacted]
	s 22 CSLR: <b>Outstanding</b>	Letter to the Prime Minister attached for your signature ( <u>Attachment J</u> refers)
Approval from another portfolio Minister	s 22	[Redacted]
	CSLR: Not required	Not applicable
State and Territory approval/notification	s 22 CSLR: <b>Outstanding</b>	s 22 [Redacted]
ATO/Treasury quality assurance	Not required	Not applicable
ASIC/Treasury quality assurance	s 22	[Redacted]
	CSLR: In place/Outstanding	Approval received 24 February 2023

**SENSITIVITIES/ISSUES**

- The Australian Financial Complaints Authority has advised that the anticipated costs for the CSLR have increased due to market movements in the costs of goods and services.

s 34(3) [Redacted]

Clearance Officer  
 Erin Wells  
 Assistant Secretary  
 Law Division  
 24 February, 2023

Legislation Liaison Officer  
 s 22  
 Assistant Director  
 Ph: s 22

Case Manager  
 Robb Preston  
 Assistant Secretary  
 Ph: 02 6263 2876

## CONSULTATION

---

Financial Systems Division, Australian Securities and Investments Commission, Attorney-General's Department, Legislative and Governance Forum on Corporations, Office of Parliamentary Counsel, Department of the Prime Minister and Cabinet.

## ATTACHMENTS

---

s 22

s 22

I: Letter to LGFC;

J: Letter to the Prime Minister;

s 46(c)

M: Press Release;

s 46(c)

O: Questions and Answers;

s 22

## ADDITIONAL INFORMATION

---

s 22

Treasury Laws Amendment (Financial Services Compensation Scheme of Last Resort) Bill 2023



**Financial Services Compensation Scheme of Last Resort Levy Bill 2023**  
**Financial Services Compensation Scheme of Last Resort Levy (Collection) Bill 2023**

**Case Manager**

Robb Preston s 22

Measure	Law Contact	Policy Contact
s 22	s 22	s 22
CSLR	s 22	s 22

**Related ministerial submissions**

s 22

CSLR: MS22-000942, MS22-001623, MS22-001644, MS22-001739, MS22-002047, MS22-002495, MS22-002642, MS23-000300

**Discharge of previous Bills**

The Financial Services Compensation Scheme of Last Resort Levy Bill 2022, the Financial Services Compensation Scheme of Last Resort Levy (Collection) Bill 2022 and the s 22 (the previous Bills) that are currently before the Senate will need to be discharged from the Senate notice paper for the s 22 and CSLR Bills to be introduced into the Senate. We have drafted a letter to the Prime Minister for approval to discharge the bills from the Senate notice paper ([Attachment J](#) refers).

Once the Prime Minister has agreed to discharge the previous Bills from the Senate notice paper, we recommend that your Office liaise with Senator Gallagher’s office and the Senate Table Office to facilitate tabling of a motion to in the Senate to discharge the bills from the Senate notice paper. You may arrange for this motion to occur immediately after the s 22 and CSLR bills are introduced to the Senate, or at an appropriate time prior to introduction to the Senate.

**Overview of the Bills**

s 22

Together, the **Treasury Laws Amendment (Financial Services Compensation Scheme of Last Resort) Bill 2023**, the **Financial Services Compensation Scheme of Last Resort Levy Bill 2023**, and the **Financial Services Compensation Scheme of Last Resort Levy (Collection) Bill 2023** establishes the CSLR. The CSLR is designed to provide compensation to consumers who have received a relevant determination in their favour by the Australian Financial Complaints Authority, where that determination remains unpaid.

Minor formatting and editorial changes to the Bills and Explanatory Memorandum may be made to the versions attached prior to the documents being sent to the printer.

This Bill was drafted by the Office of Parliamentary Counsel.

### **Regulatory Impacts**

The Office of Impact Analysis (OIA) has been consulted about § 22 and CSLR measures (OIA ID: 24849 and OIA ID: OBPR22-02542 respectively). For both of these measures, the Financial Services Royal Commission Final Report has been certified as being informed by a process and analysis equivalent to an Impact Analysis (IA) for the purposes of the Government decision to implement these reforms.



**THE HON STEPHEN JONES MP**  
ASSISTANT TREASURER AND MINISTER FOR FINANCIAL SERVICES

---

**TO:**

<b>Mr Shane Rattenbury MLA</b> Attorney-General Australian Capital Territory	<b>The Hon Kyam Maher MLC</b> Attorney-General South Australia
<b>The Hon Mark Speakman MP</b> Attorney-General New South Wales	<b>The Hon Elise Archer MP</b> Attorney-General Tasmania
<b>The Hon Chanston Paech MLA</b> Attorney-General Northern Territory	<b>The Hon Jaclyn Symes MP</b> Attorney-General Victoria
<b>The Hon Shannon Fentiman MP</b> Attorney-General Queensland	<b>The Hon John Quigley MLA</b> Attorney-General Western Australia

---

**DATE:**

---

**SUBJECT:** Notification – Treasury Laws Amendment (Financial Services Compensation Scheme of Last Resort) Bill 2023, <sup>s 22</sup> [REDACTED]

---

Dear Attorneys-General

In accordance with clause 506 and 507 of the *Corporations Agreement 2002*, I write to notify you of the proposed amendments to the *Australian Securities and Investments Act 2001* (ASIC Act) and *Corporations Act 2001* (Corporations Act) contained in the <sup>s 22</sup> [REDACTED]

[REDACTED] and Treasury Laws Amendment (Financial Services Compensation Scheme of Last Resort) Bill 2023 (the Bills). The draft Bills and Explanatory Memoranda are attached.

Pursuant to clause 507 of the *Corporations Agreement 2002*, the amendments to the Corporations Act and the ASIC Act do not require your approval, as the amendments either relate to matters regulated by Chapter 7 (financial services and markets) of the Corporations Act or they have a minor policy impact and have a low or nil regulatory impact.

The amendments to the Corporations Act (outside of Chapter 7) have a minor policy impact and a low or nil regulatory impact as they update existing powers of Australian Securities and Investments Commission (ASIC) (in relation to deregistration for non-payment of levies and whistleblower protections) to reflect the changes implemented to Chapter 7 of the

Corporations Act <sup>s 22</sup> [REDACTED]. The amendments to the ASIC Act have a minor policy impact and a low or nil regulatory impact as they update existing functions and powers of ASIC (in relation to confidentiality of information) to reflect the implementation of the <sup>s 22</sup> [REDACTED] and the Compensation Scheme of Last Resort.

s 22

The Treasury Laws Amendment (Financial Services Compensation Scheme of Last Resort) Bill 2023 (CSLR Bill) implements recommendation 7.1 of the Financial Services Royal Commission to establish the Compensation Scheme of Last Resort. This Schedule amends the Corporations Act to provide that the Compensation Scheme of Last Resort may be administered by the operator, which is a company that meets the mandatory requirements and is authorised by the Minister.

The amendments provide a pathway for eligible consumers to receive compensation, flowing from an Australian Financial Complaints Authority (AFCA) determination in their favour, where the financial firm has not paid the consumer in accordance with the determination. Under the scheme, a complainant who has been provided a determination by AFCA relating to a financial product or service specified in the Bill will be able to seek the compensation awarded by AFCA, up to \$150,000, from the operator.

The CSLR Bill operates together with two other bills that are not subject to the *Corporations Agreement 2002*, but for completeness, I note that the Government also intends to introduce the following legislation into Parliament:

- Financial Services Compensation Scheme of Last Resort Levy Bill 2023; and
- Financial Services Compensation Scheme of Last Resort Levy (Collection) Bill 2023.

It is anticipated that the Bills will be introduced into Parliament in week 3 of the 2023 Autumn Sittings (week commencing 6 March 2023).

If you have any questions, please contact s 22 [REDACTED], Director, Financial System  
Division on s 22 [REDACTED] in regard to the Compensation Scheme of Last Resort s 22 [REDACTED]  
s 22 [REDACTED]

Yours sincerely

THE HON STEPHEN JONES MP



**THE HON STEPHEN JONES MP**  
ASSISTANT TREASURER AND MINISTER FOR FINANCIAL SERVICES

Ref: MS23-000379

The Hon Anthony Albanese MP  
Prime Minister  
Parliament House  
CANBERRA ACT 2600

Dear Prime Minister

I write in relation to the Government's priority to establish the Compensation Scheme of Last Resort (CSLR) and the § 22 [redacted] in finalising the response to the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Financial Services Royal Commission).

On 8 September 2022, the Government introduced a package of legislation into Parliament to progress several policy measures, including the establishment of the CSLR § 22 [redacted]. The legislation was substantively the same as that progressed under the former government. While the legislation was subject to consideration in the Senate, you agreed to my proposal to progress Government amendments to remove the CSLR § 22 [redacted] provisions from the then Financial Sector Reform Bill 2022. The removal of those provisions from the legislation enabled the immediate passage of long-awaited credit reforms and further consultation to be undertaken on the CSLR § 22 [redacted] to ensure their implementation arrangements are appropriately calibrated.

§ 34(3)

[redacted] have also separately written to you seeking your agreement to amend the 2023 Autumn legislation program to facilitate the priority reintroduction and passage of legislation to establish the CSLR § 22 [redacted]. If you agree to my proposals, I will progress legislation for priority reintroduction in the third week of the Autumn sittings, with time critical status, commencing 6 March 2023. This will enable the Government to deliver on key outstanding recommendations from the Financial Services Royal Commission, provide consumers, industry and regulators with greater certainty, and allow for smooth implementation of the CSLR § 22 [redacted].

Additionally, I seek your agreement to discharge the following bills from the notice paper that are currently before the Senate: Financial Services Compensation Scheme of Last Resort Levy Bill 2022; Financial Services Compensation Scheme of Last Resort Levy (Collection) Bill 2022; § 22 [redacted]. Reintroducing CSLR § 22 [redacted] as a new package of bills to be debated in cognate and discharging of the existing bills, will reduce the complexity of the process for progressing the bills through Parliament.

Compensation Scheme of Last Resort

The collapse of Dixon Advisory and Superannuation Services Pty Ltd (Dixon Advisory) has had a significant impact on the estimated financial costs of the Scheme, particularly on the ten-largest financial institutions who would receive a one-off levy to fund the backlog of eligible complaints that have accumulated with the

Australian Financial Complaints Authority (AFCA) since 2018. The backlog consists of 1,836 complaints, of which 1,638 relate to Dixon Advisory. Following the introduction of the package of legislation last year, the one-off levy payers, and their representative bodies, raised concerns with respect to the proposed design and operation of the one-off levy, particularly the funding that would be required to address the backlog following the collapse of Dixon Advisory.

Following further consultation, I am proposing to progress eight targeted changes to the design of the CSLR as outlined at [Annexure A](#). The proposed changes directly address concerns raised by the one-off levy payers. They ensure that firms who will receive the one-off levy are captured on the basis of the most up-to-date available data, and by enabling the one-off levy to be paid in two equal instalments across the first two levy periods to make it a more manageable cost to impacted firms. The remaining changes seek to address critical issues that are necessary to progress now to support the Scheme's effective implementation. I seek your policy authority to progress these targeted changes in finalising the CSLR legislation for reintroduction.

s 45

A large rectangular area of the document is redacted with a solid grey fill, obscuring the text that would follow the 's 45' label.

s 34(3)

A large rectangular area of the document is redacted with a solid grey fill, obscuring the text that would follow the 's 34(3)' label.

The Office of Impact Analysis has advised that there is no requirement to provide any additional impact analysis for this proposal (reference: OBPR 22-02542).

s 22

A very large rectangular area of the document is redacted with a solid grey fill, obscuring the majority of the text on the page that would follow the 's 22' label.

I seek your response by 3 March 2023 to my proposals to facilitate the finalisation of the legislation.

I have copied this letter to the Treasurer and the Minister for Finance for their information.

Yours sincerely

The Hon Stephen Jones MP

Enc

CC: The Hon Dr Jim Chalmers, Treasurer; Senator the Hon Katy Gallagher, Minister for Finance



**Annexure A – Proposed changes to the Compensation Scheme of Last Resort (CSLR)**

Measure	As Introduced in September 2022	Proposed amendment
<b>One-off Levy – cohort of levy payers</b>	The ten-largest prudentially regulated financial firms (excluding superannuation trustees and health insurers) with total incomes greater than \$6 billion in 2019-20 will be required to pay a one-off levy to cover pre-CSLR claims (the backlog) in proportion to their total income in 2019-20.	The ten-largest prudentially regulated financial firms (excluding superannuation trustees and health insurers) measured by their 2021-22 total income (as reported to the Commissioner of Taxation), will be required to pay a one-off levy to cover pre-CSLR claims (the backlog of accumulated complaints) in proportion to their total income in 2021-22.
<b>One-off Levy – payment in instalments</b>	Financial firms must pay their one-off levy in a single, lump sum payment.	Financial firms will have the option of paying their one-off levy in two equal instalments, paid across the first two levy periods.
<b>Backlog cut-off date – ‘accumulation recovery day’</b>	<p>‘Accumulation recovery day’ is defined as the day the Bill for the <i>Financial Sector Reform Act 2022</i> was introduced into the House of Representatives. Complaints made to AFCA before that day will form part of the backlog of accumulated complaints.</p> <p>As the Bill was introduced into the House on 8 September 2022, the backlog cut-off date is 7 September 2022.</p>	Amend relevant provisions to maintain the backlog cut-off date of 7 September 2022 as it applied under the <i>Financial Sector Reform Bill 2022</i> when it was introduced into the House on 8 September 2022.
<b>Annual Levy – Duration of the first levy period</b>	Levy period means a financial year starting on or after 1 July 2023. The duration of each levy period is 12 months (from 1 July to 30 June of the following year).	<p>Amend relevant provisions to provide that the first levy period is to begin on a day to be determined by the responsible Minister (via a notifiable instrument) and end on 30 June 2024.</p> <p>A minimum of eight-months from the passage of legislation will be required to establish the Scheme operator ready for scheme start. Where the CSLR legislation passes in March 2023, it is anticipated that the first levy period would commence from 1 December 2023.</p>

Measure	As Introduced in September 2022	Proposed amendment
<p><b>One-off Levy – expand the ability to collect any backlog shortfall from the annual levy</b></p>	<p>Should collections of the one-off levy be insufficient to fund the backlog of pre-CSLR claims, the shortfall could be collected as part of the annual levy for only the second levy period in 2024-25 (not subsequent levy periods).</p> <p>It will be very difficult to make an accurate estimate of the shortfall at that time. AFCA expect determination of backlog claims to take around 18 months from July 2023, that is to around December 2024.</p>	<p>Amend relevant provisions enabling the CSLR operator to address the backlog shortfall at a time when it is better-informed of whether a shortfall will be experienced and its value.</p> <p>Amendments would enable the operator to collect shortfalls against the backlog from attributable sub-sectors in the second (2024-25), third (2025-26) and/or fourth (2026-27) levy periods (as required).</p>
<p><b>Levy Notices – ASIC default notices power</b></p>	<p>ASIC does not have the power to issue a levy notice to a leviable entity where the leviable entity does not comply with the CSLR information reporting requirements.</p>	<p>Amend relevant provisions to enable ASIC to issue default levy notices even where the leviable entity fails to provide information (or where the information provided is not adequate). This could be achieved by replicating the equivalent provision used in the collection of the ASIC Industry Funding Model (IFM) levy.</p>
<p><b>AFCA Cost Recovery – ensure full recovery of CSLR costs by AFCA</b></p>	<p>AFCA may be prevented from fully recovering all the costs that they incur in assessing complaints potentially eligible to claim against the CSLR because the legislation does not allow for the recovery of AFCA’s “user charge” which may be charged monthly, quarterly, or annually.</p>	<p>Amend the definition of “AFCA unpaid fees” and “AFCA accumulated unpaid fees” to enable the full recovery of fees and costs incurred under AFCA’s new funding model (that is, to cover both the “user charge” and the “complaint fee”) and to provide flexibility to cover potential future funding models.</p>

s 45

s 45

s 47C



**The Hon Stephen Jones MP  
Assistant Treasurer and Minister for Financial Services**

**MEDIA RELEASE**

[Insert date] 2023

**MOVING AHEAD WITH HAYNE ROYAL COMMISSION  
RECOMMENDATIONS**

After further consultation, the Albanese Government has today re-introduced legislation into Parliament to implement the two key remaining measures from the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Financial Services Royal Commission).

The Financial Services Royal Commission highlighted the need for better consumer outcomes, enhanced accountability and strong and effective regulators to restore trust in Australia's financial system.

The legislation introduced into Parliament implements recommendation 3.9, 4.12, 6.6, 6.7, 6.8 and 7.1 from the Financial Services Royal Commission.

s 22

**Compensation Scheme of Last Resort**

The Government is delivering on its election commitment to establish a Compensation Scheme of Last Resort (CSLR) to ensure Australians continue to have trust and confidence in the financial system external dispute resolution framework.

Media contact: Tom Iggulden 0448 081 191 | tom.iggulden@treasury.gov.au

The CSLR will facilitate the payment of compensation of up to \$150,000 to eligible consumers who have a determination from the Australian Financial Complaints Authority (AFCA) relating to personal financial advice, credit intermediation, securities dealing and credit provision which remains unpaid.

The Government will contribute towards the initial costs of the scheme which is intended to start from December 2023. The scheme will otherwise be fully industry funded through levies on relevant financial service and credit licensees.

**Ends**

**TREASURY LAWS  
AMENDMENT (FINANCIAL SERVICES COMPENSATION  
SCHEME OF LAST RESORT) BILL 2023, FINANCIAL  
SERVICES COMPENSATION SCHEME OF LAST RESORT  
LEVY BILL 2023 AND FINANCIAL SERVICES  
COMPENSATION SCHEME OF LAST RESORT LEVY  
(COLLECTION) BILL 2023**

**Q&As**

## COMPENSATION SCHEME OF LAST RESORT (CSLR)

### CSLR Scope

#### What financial services are in scope?

The in-scope financial services are:

1. Personal advice on relevant financial products to retail clients

This includes financial advice in relation to retirement and investment options. This does not include general financial advice.

2. Credit intermediation

This includes consumers using mortgage brokers to finance the purchase of their own home or an investment property.

3. Securities dealing

This includes using a dealer to trade in shares or other securities where the person using the services is a retail client.

4. Credit provision

This includes credit cards and consumer leases. It does not include commercial lending.

#### Why have these been selected as being in scope?

The scope of the CSLR reflects financial products where there is evidence of unpaid determinations and the characteristics of the product make it suitable for inclusion.

Aligning the in-scope financial product and service providers with the ASIC Industry Funding Model subsectors means that those financial firms licensed to provide the same type of financial product or service will, in general, share in meeting the costs of unpaid determinations relating to that product or service. The alignment also reduces the cost and time required to establish the CSLR.

#### Why are insurance product distributors not in scope?

Insurance product distributors have not been included in scope due to feedback received during consultation.

In particular, the losses in the sector are not considered material. Also, if included, the scheme would capture firms wider than intended, including superannuation fund trustees, thereby adding unnecessary costs for these firms.

#### Why are managed investment schemes not in scope?

Although the Government acknowledges evidence of unpaid Australian Financial Complaints Authority (AFCA) determinations relating to managed investment schemes, it considers that these financial products are unsuitable for inclusion at this time.

The scope of the CSLR reflects financial products that have undergone significant regulatory reform which have reduced the risk of misconduct and failure. Managed investment schemes can involve high-risk investments.



## **What is the Government doing to help consumers in relation to managed investment schemes?**

Reforms made before, and in response to, the Financial Services Royal Commission have enhanced protections for consumers in many ways.

For example, design and distribution obligations were introduced from 5 October 2021, that require the target market to be identified for all financial products, including managed investment schemes, and then require the product to be designed to suit that target market. This will prevent the selling of inappropriate products to consumers.

As a further example, in response to the Financial Services Royal Commission, broader 'anti-hawking' rules were introduced to prevent the pressure selling of financial products, including managed investment schemes.

## **Why is there a \$150,000 cap on individual claims?**

The \$150,000 compensation cap balances the provision of compensation to claimants and scheme sustainability for those financial firms that are not responsible for the misconduct giving rise to the compensation being claimed but are nonetheless being required to pay for it.

The \$150,000 compensation cap broadly aligns with the United Kingdom's Financial Services Compensation Scheme's maximum of £85,000.

## **Why doesn't the scheme help the victims of past failures?**

It would not be appropriate nor desirable that current industry participants be required to contribute to pay for compensation arising from determinations against former industry participants.

Under the *Paying Legacy Unpaid External Dispute Resolution Determination program*, compensation was provided to individual and small business consumers who had received a determination from one of the predecessor schemes - the Financial Ombudsman Service or the Credit and Investments Ombudsman - which remained unpaid due to the financial service provider being bankrupt or under external administration, or was deregistered or wound up.

In addition, AFCA's remit to review financial complaints was temporarily extended to include complaints dating back to January 2008 for complaints lodged during the 2019-20 financial year. This temporary extension provided access to redress to many thousands of Australian consumers that would otherwise not have been able to lodge a complaint with AFCA.

## **Why doesn't the scheme cover court and tribunal decisions?**

Although the Ramsay Review of the financial system external dispute resolution and complaints framework recommended that eligible court and tribunal decisions should be within scope for the CSLR, there is currently no data on the number and amounts of court and tribunal determinations that remain unpaid.

The lack of data makes it difficult to estimate the number and quantum of unpaid court and tribunal determinations that could impact the CSLR.

Consideration of the inclusion of court and tribunal decisions in the CSLR, on a forward-looking basis, could occur in the context of the periodic reviews of the scheme.

## **CSLR Timing**

### **When will the CSLR commence?**

The intention is that the CSLR operator will be able to start paying claims to eligible consumers from December 2023.

### **Why can't the CSLR start making payments sooner?**

Following the passage of the legislation, there are a number of steps required to take place before payments can be made. These include regulations needing to be made, the CSLR operator being established, commencing operations, and being authorised by the Minister to administer the CSLR.

Also, AFCA has placed on hold many complaints lodged with it against insolvent firms in anticipation of the CSLR commencing. Once the CSLR is established, AFCA will take some time to assess these sometimes-complex complaints, and where relevant, for the CSLR operator to process the claim and make payments.

### **How long will consumers need to wait to get paid?**

Payments will be made to claimants as soon as the CSLR operator has completed assessing and processing the claim.

## **CSLR Cost**

### **How will the costs of the CSLR be met?**

The Government will fund the establishment of the CSLR, which is intended to be operational from December 2023.

The Government will also fund the scheme's initial operation until 30 June 2024.

The back log of complaints (lodged with AFCA from 1 November 2018 to 7 September 2022) that are expected to be eligible to claim on the scheme will be funded through a one-off levy on Australia's 10 largest banking and insurance groups.

An ongoing industry levy will then be established to fund the CSLR. This levy will be imposed on those licensees that are authorised to provide the services that are in scope for the CSLR. The amount of levy payable by each licensee would be proportionate to its size, with a minimum levy of \$100 for all relevant licensees.

### **Why is the Government not fully funding the CSLR?**

To allow the scheme to start paying claims as soon as possible, the Government will contribute to initial scheme costs, including establishment costs.

Going forward, the CSLR will be industry funded, consistent with the recommendations of the Ramsay Review and the Financial Services Royal Commission.

### **Is it expected that scheme costs will constantly grow, like they have in the UK Financial Services Compensation Scheme?**

CSLR costs are not expected to constantly grow because of regulatory changes that have already been made to reduce misconduct in the financial services industry.

Examples of these regulatory changes include the Better Advice Act, the design and distribution obligations regime, breach reporting, broker and adviser reference checking,



strengthening phoenixing rules, increasing professional standards, the Single Disciplinary Body and Director Identification Numbers.

### **CSLR Legislation**

#### **Can consumers appeal a decision of the CSLR?**

A decision made by the CSLR operator will not be reviewable by the Administrative Appeals Tribunal which is consistent with the treatment of AFCA decisions.

However, a decision made by the CSLR operator is reviewable under the *Administrative Decisions (Judicial Review) Act 1977*.

#### **How will the privacy of individuals be protected under the CSLR?**

The collection of some personal information will be necessary to make sure claimants are entitled to the compensation being requested and that the correct people are being compensated.

To the extent that personal information is collected and stored, its disclosure and use is limited to enabling the performance of functions or powers under law.

### **CSLR Administration**

#### **Who will administer the CSLR?**

The legislation allows for Ministerial authorisation of a public company (CSLR Co) to operate the scheme. CSLR Co (the CSLR operator) is proposed to be a subsidiary of AFCA Limited and must be a company limited by guarantee and operate on a not-for-profit basis.

AFCA will play an important role by determining complaints against insolvent firms, or firms that are unlikely to pay, where the complaint relates to a financial product or service that is in-scope for the CSLR.

ASIC will play a role in regulating the CSLR operator's administration of the scheme and levying financial firms to provide funds to the scheme, to compensate claimants, and fund costs incurred by AFCA and the CSLR operator.

The Minister will appoint the independent Chair of the CSLR operator. The Minister will also have powers to take specified actions where the CSLR operator has notified the Minister that it estimates, during a claim year, that it will exceed the subsector cap.

#### **What will the governance arrangements be for the CSLR operator?**

The Board of the CSLR operator will be accountable for the administration of the scheme and will be subject to regulatory oversight by ASIC. The Board will consist of an independent Chair (appointed by the Minister), a person who is a member of the board of AFCA, and an actuary who has at least 5 years of actuarial experience.

The CSLR operator will be a company limited by guarantee and operate on a not-for-profit basis and in accordance with the rules for the scheme set out in legislation and regulations.

The CSLR operator will only be able use funds raised through industry levies for scheme purposes.

The CSLR operator will establish operational guidelines and policies relating to the administration of the scheme and internal governance.

ASIC will have powers to issue general directions if the CSLR operator does not do all things reasonably practicable to ensure compliance with the mandatory requirements. Failure of the CSLR to comply with a written direction made by ASIC would be an offence and ASIC would have the ability to apply for a court order if the CSLR fails to comply with its direction.

### **CSLR risks**

#### **Is it expected that consumers will take more risks knowing the CSLR will pay?**

No. As the CSLR covers losses relating to an in-scope financial product or service due to misconduct by a financial firm (as opposed to conduct by a consumer) it should not influence a consumer's risk appetite.

#### **What mechanisms are in place to ensure unscrupulous financial firms don't take more risks knowing the CSLR will pay?**

If the CSLR compensates a claimant in relation to an eligible unpaid AFCA determination, ASIC will be given the power to:

- cancel the financial firm's Australian financial service licence (AFSL) and/or Australian credit licence (ACL); and
- make a banning order against an individual involved in that financial firm.

This will ensure that licensees meet their obligations in relation to AFCA determinations and do not consider the CSLR as an opportunity to avoid meeting those obligations.

#### **Will financial advisers covered by the scheme pay for product failures?**

Financial advice licensees covered by the scheme will only contribute to the costs of misconduct relating to the provision of financial advice. They will not pay for product failures.

#### **Will the scheme be inadequate in the face of a major financial failure?**

The overall scheme cap of \$250 million per year provides the scheme with flexibility to respond to significant financial failures if and when they arise.

The scheme provides the Minister with a toolkit that will allow them to issue special levies to in-scope and out-of-scope firms and the ability to determine that a class of CSLR claims should be paid out over more than one financial year.

### **Related issues**

#### **What is being done to ensure better financial services for consumers in the first place?**

Significant reforms have been implemented to ensure better financial services for consumers. For example, through the implementation of the Design and Distribution Obligations and recommendations of the Financial Services Royal Commission.

The new Design and Distribution Obligations will help consumers obtain more appropriate financial products by requiring issuers of financial products to determine an appropriate target market for these products, followed by issuers and distributors being required to sell their products accordingly.

### **What is being done to address the risk of licensee insolvency?**

Licensees are required by law to have adequate arrangements in place to compensate consumers for losses they suffer as a result of a breach by the licensee or its representatives.

To meet this requirement, the licensee must either have professional indemnity insurance that is adequate or have in place alternative arrangements approved by ASIC.

### **Won't the scheme make financial advice more unaffordable without fixing the real issues?**

Any costs that financial advice licensees face from the CSLR is a direct reflection of misconduct and insolvencies occurring within the sector. The advice sector can reduce those costs by doing it can to eliminate misconduct and insolvencies.

### **Impact of the collapse of Dixon Advisory & Superannuation Services Pty Ltd**

### **What is behind the significant increase in the backlog of accumulated complaints since the last time the CSLR Bills were introduced into Parliament?**

The collapse of Dixon Advisory in January 2022 has resulted in a significant increase in the number of complaints against received by AFCA. These complaints form part of the backlog of accumulated complaints on pause with AFCA.

The CSLR will address the backlog of accumulated complaints which are within scope of the scheme.

### **How many complaints make up the backlog of accumulated complaints?**

As at 1 February 2023, the backlog is comprised of a total of 1,836 complaints, of which 1,638 relate to Dixon Advisory.

The backlog is comprised of in-scope complaints provided to AFCA by 7 September 2022, which is the day before the CSLR Bills were last introduced into Parliament.

### **How much will it cost to address the backlog of accumulated complaints?**

It is not possible at this time to estimate the value of funding required to address the backlog of accumulated complaints. The vast majority of the complaints have not yet been assessed by AFCA, including their validity or likely value of compensation.

The CSLR operator will be responsible for determining an estimate of the funding required to address the costs relating to the backlog. The value of the estimate will be collected via a one-off levy to be imposed onto the ten largest banks and insurers (excluding health insurers).

The CSLR operator will work closely with AFCA to understand the nature and value of the backlog as part of finalising its estimate for the one-off levy.

### **Who will fund the costs to respond to the backlog of accumulated complaints?**

The costs to address the backlog of accumulated complaints that are within scope of the CSLR will be funded via a one-off levy to be imposed onto the ten largest banks and insurers (excluding health insurers) as measured by total income as reported in the 2021-22 Australian Taxation Office (ATO) Report of Tax Entity Information.

The amount that each group will contribute will be proportionate to their total income.



### **Why are the ten-largest banks and insurers groups required to address the backlog of accumulated complaints?**

The one-off levy is being imposed onto financial services firms who are best placed to contribute to the costs of the backlog of accumulated complaints. This appropriately reduces any risks that addressing the backlog would have to the financial system more broadly. It is also appropriate that these firms contribute to the backlog given their engagement in misconduct as uncovered by the Financial Services Royal Commission.

The CSLR will be an industry-funded scheme and firms will be required to contribute from the outset. This is consistent with the recommendations contained in the Supplementary Report of the *Review of the Financial System External Dispute Resolution and Complaints Framework* and the Financial Services Royal Commission.

The CSLR levying framework balances the provision of compensation to claimants with the impact that the scheme may have on firms required to contribute to its costs.

### **When will the one-off levy be issued, and when will the ten largest banks and insurers have to pay?**

Subject to the passage of the CSLR Bills, it is anticipated that the CSLR operator will determine the estimate for the one-off levy in September 2023.

The estimate is a disallowable instrument, and invoices will be issued once the disallowance period has passed. Levy invoices are anticipated to be issued by ASIC in December 2023. Invoices will be due no earlier than 30 days after the day on which the notice is given.

### **When will complainants begin to receive compensation?**

Subject to the timing of the passage of the CSLR Bills, it is anticipated claimants who have an eligible AFCA determination would begin to receive compensation from December 2023.

### **Will the collapse of Dixon Advisory delay the payment of compensation under the CSLR?**

There are 35 complaints where determinations have already been made by AFCA that will be able to be paid shortly after the CSLR is operational from December 2023. All other complaints, including those relating to the Dixon Advisory collapse, must first be considered by AFCA. AFCA will establish arrangements for the consideration of these complaints. Given the volume of complaints it may take up to 18 months for these complaints to be resolved.

### **How will the collapse of Dixon Advisory impact the annual levy estimate in future years, particularly for the financial advice sub-sector?**

The annual levy estimate will equal what the CSLR operator reasonably believes, having regard to actuarial principles, is required to make compensation payments and cover scheme costs for the upcoming levy period.

The operator may have regard to any matter it considers appropriate as part of determining the estimate, including the historical number and value of unpaid complaints attributable to in-scope sub-sectors.

### **How will the CSLR respond if there are more large failures?**

The CSLR operator will have the ability to seek further funding during a levy period from in-scope sub-sectors up to the scheme levy cap limit of \$20 million per sub-sector.

Where further funding would result in a scheme levy cap being exceeded, Ministerial involvement will be required to impose a levy. In these circumstances, the Minister may determine that a special levy is to be imposed onto the sub-sector responsible for the funding shortfall, or alternatively be spread across various sub-sectors, including those that are outside the scope of the CSLR.

The scheme levy cap of \$250 million imposes the absolute maximum limit of levy that may be levied under the CSLR each levy period.

**Does the Federal Court’s decision to impose a penalty onto Dixon Advisory indicate that Dixon complaints are likely to be found in favour of the complainant?**

On 19 September 2022, the Federal Court imposed a \$7.2 million penalty on Dixon Advisory after it found that six Dixon Advisory representatives failed to act in their client’ best interests and failed to provide advice appropriate to their clients’ circumstances before providing the advice.

The Federal Court’s decision should not be taken as an indication of the likelihood that complaints relating to Dixon Advisory provided to AFCA will be found in favour of the complainant. Each complaint provided to AFCA will be considered individually and subject to AFCA’s decision-making processes.

**What did the Federal Court find in ASIC v Dixon 2022?**

The Federal Court found that Dixon Advisory representatives did not conduct a reasonable investigation of the clients’ circumstances before providing the advice. This resulted in situations where a client’s self-managed superannuation fund was insufficiently diversified and exposed to risk of capital loss when recommended to acquire, roll-over or retain interests in the US Residential Property Fund (URF) and related products.

**Impact on complaints relating to managed investment schemes from the CSLR**

**What is the impact of excluding managed investment schemes (MISs) from the CSLR on existing AFCA determinations relating to MISs that remain unpaid?**

AFCA determinations relating to MISs that remain unpaid will not be eligible for compensation under the CSLR.

**What is the impact of excluding MISs from the CSLR on MIS complaints currently forming part of the backlog of accumulated complaints?**

Complaints provided to AFCA relating to MISs will remain paused until the passage of the CSLR Bills.

Following the passage of the CSLR Bills, AFCA will close all complaints within the backlog of accumulated claims which would not be eligible for compensation under the CSLR, including complaints relating to MISs.

**When will MISs be brought within scope of the CSLR?**

The scope of the CSLR is a matter for Government. The CSLR will be subject to periodic reviews, which may consider the ongoing appropriateness of its design, including scope.



Australian Government  
The Treasury

Ministerial Submission  
MS23-000556

s 34(3) [redacted] and other matters

TO: Assistant Treasurer and Minister for Financial Services - The Hon Stephen Jones MP  
CC: Treasurer - The Hon Jim Chalmers MP

TIMING

Urgent. s 34(3) [redacted]

Recommendation

s 34(3) [redacted]

Signed / Not signed

- That you agree to Treasury publishing stakeholders submissions received in response to exposure draft consultation on the CSLR Bills and Regulations.

Agree / Not agreed

- That you note that following the passage of the CSLR Bills, the Australian Financial Complaints Authority (AFCA) will close over 2,000 complaints against insolvent firms that fall outside the scope of the CSLR, s 22 [redacted]

Noted / Please discuss

Signature	Date: /03/2023
-----------	----------------

2 pages have been removed from this document as exempt material under section 34(3) of the FOI Act

KEY POINTS

---

- Subject to the passage of the CSLR Bills in May 2023, we are seeking to facilitate the commencement of the CSLR in March 2024.
  - Since the reintroduction of CSLR legislation on 8 March 2023, we have been working closely with the Australian Financial Complaints Authority (AFCA) and the Australian Securities and Investments Commission (ASIC) to implement the CSLR.

s 34(3) [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted] s 47C

*Request to publish stakeholder submissions to CSLR Bills and Regulations*

- Consistent with standard practice, we seek your agreement to publish stakeholder submissions received in response to exposure draft versions of the original CSLR Bills and draft CSLR Regulations.
  - Exposure draft consultation achieved strong engagement by industry, consumer groups and the general public:
    - : the original CSLR Bills were subject to consultation between 16 July and 13 August 2021, and received 65 stakeholder submissions; and
    - : the draft CSLR Regulations were subject to consultation between 8 September and 7 October 2022, and received 18 stakeholder submissions.
  - Feedback varied significantly on the specifics of the CSLR, including on matters relating to governance, scope and levying arrangements.
- If you agree, we will work with your office to finalise the publication of the submissions.

*AFCA's handling of out-of-scope complaints*

- Following the passage of CSLR Bills, AFCA will begin closing over 2,000 complaints that fall outside the scope of the CSLR <sup>§ 22</sup> [REDACTED]
  - The passage of the primary legislation will provide finality on the scope for the CSLR and therefore certainty on complaint eligibility to AFCA and consumers more broadly.
  - Following the passage of the Bills, AFCA will initially publish a media release publicising its decision to close out of scope complaints with a view that impacted complainants will be advised directly that their complaint has been closed.
- We are supportive of this approach as it will provide certainty to consumers whose complaints are closed <sup>§ 22</sup> [REDACTED]
- We expect consumer queries to your office, AFCA, ASIC and Treasury to rise significantly following AFCA's announcement of its decision to close out of scope complaints. We will work closely with your office and the other agencies about handling these matters.

*Appointment of the Chair of the of the board of the CSLR operator*

- Under the CSLR legislation, you will be responsible for appointing the independent Chair of the board of the CSLR operator. <sup>47C</sup> [REDACTED]
- It is important that the inaugural Chair be appointed as soon as possible. This ensures they can participate in decisions establishing the operator, such as appointing key personnel and setting up systems.



- Subject to the passage of the CSLR Bills in March 2023,<sup>47C</sup>

[REDACTED]

[REDACTED]

[REDACTED]

Clearance Officer  
Robb Preston  
Assistant Secretary  
Financial System Division  
29/03/2023

Contact Officer  
s 22  
Director (A/g)  
Ph: s 22

## CONSULTATION

---

Law Division, Chief Financial Officer Branch, the Department of Finance, the Department of the Prime Minister and Cabinet, and the Australian Financial Complaints Authority (AFCA)

## ATTACHMENTS

---

A: Letter to the Prime Minister