Australian Banking Association

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

&

Curbing lead generation activity

The Treasury

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Australian Banking Association

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About the ABA

The Australian Banking Association advocates for a strong, competitive and innovative banking industry that delivers excellent and equitable outcomes for customers. We promote and encourage policies that improve banking services for all Australians, through advocacy, research, policy expertise and thought leadership.

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Key Recommendations

The ABA continues to support the intent of the CSLR as a last-resort scheme that compensates genuine victims where they have suffered actual financial loss as a result of financial misconduct that they have otherwise been unable to recover. Structural, targeted and technical reform is required to ensure the ongoing sustainability of the CSLR for genuine victims. The ABA makes the following recommendations:

Part A: CSLR Reform options to support ongoing sustainability

Recommendation 1: Ensure CSLR compensation is reduced to reflect other available avenues of compensation, with later recovery where needed to avoid double compensation (Proposal 1). This would better align the CSLR with its intended role as a genuine scheme of last resort and avoid double compensation.

Recommendation 2: Strengthen CSLR subrogation rights by allowing broader recovery of both amounts and sources (Proposal 2). The options identified by Treasury should operate on a complementary basis to improve recoveries and reduce the burden on levy-paying sectors.

Recommendation 3: Limit CSLR-eligible compensation to capital losses only (Proposal 4, Option 1). A capital loss only approach better aligns the CSLR with its intended role as a genuine scheme of last resort.

Recommendation 4: Require a demonstrable and material connection for 'connected' sub-sector classification under the special levy waterfall, supported by clear published criteria (Proposal 5). Tier 2 should capture only sub-sectors whose products or services formed a material part of the pathway to harm. Tier 2 should not be identified based solely on the breadth of licensing arrangements or the provision of merely ancillary services.

Recommendation 5: Exclude SMSFs from CSLR eligibility (Proposal 6, Option 2), supported by disclosure obligations at the point of SMSF establishment. If Government does not proceed with full exclusion, SMSFs should contribute to the scheme and any contribution model should avoid creating moral hazard. However, the ABA's clear preference remains exclusion on simplicity and administrative ease grounds.

Recommendation 6: Adopt a broad-based levy for the managed investment scheme sector rather than a risk-tiered model (Proposal 7). A broad-based approach is simpler, more transparent and easier to administer, and avoids the definitional and reputational difficulties of trying to distinguish between lower-risk and higher-risk schemes.

Recommendation 7: Establish a related-entity liability mechanism for corporate group recovery (Proposal 8, Option 2). Unpaid determinations should not shift costs to unrelated sub-sectors via the CSLR special levy where related entities have retained value from the respondent firm's business.

Part B: Curbing lead generation activity

Recommendation 8: Prioritise accountability, remuneration and advertising reforms, backed by stronger ASIC supervision and enforcement, over further anti-hawking extensions. The existing anti-hawking framework is sufficiently restrictive. Reform efforts should instead focus on strengthening accountability for higher-risk lead generation models, targeting misaligned remuneration structures, enabling earlier regulatory intervention, and ensuring ASIC is equipped to supervise and take enforcement action against lead generators and related entities that engage in misconduct.

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ABA submission to the Treasury

The ABA welcomes the opportunity to provide a submission to the Treasury on its consultation papers on CSLR reform options and curbing lead generation activity.

The ABA's submission is a combined response to both consultation papers given the policy interconnections between the CSLR reform proposals and the lead generation reforms, and noting the Government has released these consultations concurrently as part of its broader response to the Shield Master Fund and First Guardian Master Fund collapses. Reflecting that, this submission is structured in two parts. Part A addresses the CSLR reform options and Part B addresses the curbing lead generation activity consultation.

The ABA continues to support the intent of the CSLR as a genuine scheme of last resort that compensates consumers who have suffered actual financial loss as a result of financial misconduct and have no other avenue for redress. It is encouraging to see Treasury now considering reforms directed at bringing the CSLR closer to its intended role and improving the scheme's long-term sustainability. Since our submission to the CSLR post-implementation review in February 2025, the funding pressures on the scheme have continued to intensify. The CSLR operator's initial cost estimate for 2026–27 is $137.5 million, with $126.9 million attributable to the personal financial advice sub-sector. This does not yet account for potential liabilities from the Shield and First Guardian collapses, which based on available modelling could range from approximately $70 million to $880 million depending on claim volumes and recoveries. These figures underscore the urgency of the structural reforms proposed in this options paper.

The ABA's comments on the curbing lead generation activity consultation paper are more limited. While the ABA recognises the consumer harm that can arise from inappropriate lead generation practices, we consider that the existing anti-hawking framework under the Corporations Act is already sufficiently restrictive and that further extensions to the hawking prohibition (Reform 2) are unlikely to materially change outcomes. The ABA's view is that reform efforts are better directed at measures that more directly address the higher-risk business models giving rise to harm, including through enhanced accountability for lead generators (Reform 1), carefully targeted remuneration reforms (Reform 3), earlier regulatory intervention at the advertising stage (Reform 4), and stronger ASIC supervision and enforcement. Those reforms should be calibrated so they do not unnecessarily impede legitimate and lower-risk referral activity.

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Part A: CSLR reform options to support ongoing sustainability

Targeted reform proposals

The ABA supports the targeted reform proposals in Proposals 1 to 3, which are directed at improving the operation, integrity and recovery settings of the CSLR. The ABA's detailed comments on Proposals 1 and 2 are set out below. The ABA is broadly supportive in principle of Proposal 3.

The ABA also considers there is a broader issue of cost discipline that should form part of the CSLR's technical reform agenda. The preservation of CSLR funds for victims should remain a central objective of the scheme. While the ABA recognises that the administration of the scheme necessarily involves assessment, dispute resolution and regulatory oversight costs, Treasury should review the fees and administrative charges imposed on the CSLR, including AFCA fees and ASIC administrative costs, to ensure those settings remain proportionate and efficient. Consideration should also be given to whether there are opportunities to streamline those charges, or to apply caps or other constraints given that costs imposed on the scheme reduce the funds available for consumer compensation.

Proposal 1: Enabling CSLR to deduct payments from compensation

The ABA supports a reform that would allow CSLR compensation to be reduced by amounts that a claimant is entitled to recover from other sources in respect of the same loss. This would better align the scheme with its intended role as a genuine scheme of last resort by ensuring it does not operate as a convenience option where other avenues of compensation remain available but unresolved.

In practice, this supports an approach under which CSLR compensation is held back, or paid net of known deductible amounts, pending the resolution of other reasonably available avenues of compensation. Where relevant recoveries are not known or quantifiable at the time of payment, the ABA supports a mechanism to subsequently recover additional compensation so double compensation is avoided. This would improve the integrity and sustainability of the scheme by ensuring claimants are compensated only for their remaining uncompensated loss, while preserving flexibility to deal with cases where external recoveries crystallise later.

Proposal 2: Expanding CSLR subrogation rights

The ABA supports strengthening the CSLR's subrogation framework to improve recoveries and reduce the extent to which scheme costs are borne by levy-paying sectors. In the ABA's view, the two options identified in the options paper should be available on a complementary basis, rather than as alternatives. Accordingly, the ABA considers the CSLR should be able both to recover a broader range of amounts associated with the underlying loss and to pursue recovery from a broader range of persons or sources connected to that loss, where this is legally and practically justified. These mechanisms serve different functions and can operate together to maximise recoveries. A stronger subrogation framework would better support the scheme's sustainability, reinforce the principle that costs should be borne as far as possible by those connected to the underlying misconduct or retained value, and reduce the risk that levy-paying sectors are left funding losses that could otherwise have been recovered.

Structural reform proposals

The ABA's principal focus is on the structural reform proposals in Proposals 4 to 8, which go most directly to the fairness, sustainability and integrity of the CSLR. These proposals will have the most material effect on scheme design, levy settings and the allocation of costs across the financial services sector.

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

The ABA supports Option 1: limiting CSLR-eligible compensation to capital losses only. This position is consistent with the ABA's recommendation in our February 2025 submission to realign CSLR eligibility

with the original intent of the CSLR by ensuring that compensation is provided solely for actual uncompensated financial losses rather than for unrealised estimated profits.

A capital loss only approach would align the CSLR more closely with its role as a genuine scheme of last resort by focusing compensation on restoring consumers to their original capital position, rather than compensating them for the investment performance they might have received absent the misconduct. As the options paper notes, this approach would reduce CSLR outlays by approximately 43 per cent across the sampled cases. This is a material reduction that would directly support the financial sustainability of the scheme and reduce the levy burden on industry participants whose customers are unlikely to draw on the CSLR.

The ABA does not support the alternative benchmark options. While they may reduce CSLR outlays relative to the current approach, the modelling in the options paper demonstrates that they can still result in compensation being paid in circumstances where the claimant has not suffered a net capital financial loss. In the ABA's view, that outcome is difficult to reconcile with the intended nature of the CSLR as a genuine scheme of last resort focused on uncompensated actual loss.

On implementation, the ABA supports implementation via the CSLR framework itself, rather than through changes to the AFCA scheme. Implementing through the CSLR would ensure the revised methodology applies consistently to all claims that proceed to the CSLR, including cases where a firm was solvent at the time of the AFCA decision but subsequently becomes insolvent. This pathway avoids the coverage limitations associated with prospective-only application of amended AFCA rules and the risk of differential treatment within cohorts arising from the same collapse.

Proposal 5: Embedding greater certainty in the special levy framework

The ABA supports in principle the introduction of a rules-based three-tier special levy waterfall framework to provide greater certainty and predictability in how funding shortfalls are managed. The current ad hoc approach to special levies creates significant uncertainty for industry participants.

However, the ABA has concerns about how the concept of a 'connected' sub-sector under Tier 2 is proposed to operate in practice. In particular, the classification of a sub-sector as 'connected' must be grounded in a demonstrable and material connection between that sub-sector's products or services and the pathway to consumer harm that gave rise to CSLR-eligible losses. The framework should preserve a clear distinction between Tier 2 connected sub-sectors and the Tier 3 retail-facing backstop, supported by clear published criteria. If Tier 2 is allowed to expand to circumstances where the only link is that a financial adviser recommended a product from a given sub-sector, or by reference to licensing breadth rather than connection to harm through the value chain, the practical distinction between those tiers will quickly erode, undermining the stated objective of reducing cross-subsidisation.

In the ABA's view, a sub-sector should only be treated as connected where the relevant product owner, issuer, operator or service provider was itself implicated in the pathway to harm through some form of misconduct, failure or material contribution to the consumer detriment. A sub-sector should not be captured as a connected sub-sector merely because an entity provided ancillary or facilitative services somewhere in the broader chain. The mere provision of transactional, administrative, custody, banking or other ancillary services, without more, does not establish the necessary connection to harm. Further, a connected sub-sector should not be determined solely by reference to the breadth of the relevant firm's licence conditions, which may reflect the range of products and services the firm was authorised to offer but does not of itself establish a connection to the pathway to harm. There must be a stronger connection through the pathway to harm.

In practice, connected sub-sectors should be identified on the basis of whether the sub-sector's products or services were integral to the misconduct pathway, including where there was conduct, failure or other material contribution by the relevant product owner, issuer, operator or service provider. The evidence

used to establish that connection should be limited to case-level data demonstrating that the relevant product or service was a material component of the misconduct through the broader value chain, not merely because the advice involved that product or because an entity in the chain provided incidental or ancillary services, or because the relevant firm's licence conditions covered multiple sub-sectors. This distinction is important to ensure Tier 2 does not capture sub-sectors whose role was peripheral to the misconduct and whose involvement did not materially contribute to the loss.

That is the kind of connection evident in large-loss events such as Shield, First Guardian and Dixon, where the losses were not said to arise solely from adviser misconduct in isolation, but also involved conduct and failures further along the chain, including by entities associated with the managed investment structure. In those circumstances, it is more readily open to say that the relevant sub-sector was connected to the harm because the detriment cannot be understood by looking only at the advice layer. That is materially different from a case where an adviser simply recommends a product that proves unsuitable for the client's risk appetite, but there is no misconduct or failure by the product owner or service provider itself.

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

The ABA supports Option 2: the exclusion of SMSFs from CSLR eligibility. This is the ABA's preferred approach because it provides the clearest and simplest policy outcome, reflects the disproportionate impact of SMSF-related claims on the CSLR and recognises the fundamental nature of SMSFs as self-directed retirement savings vehicles.

As of 28 February 2026, cases involving SMSF complainants account for approximately 93.1 per cent of all paid and pending CSLR cases, representing approximately $154.14 million in compensation. The average compensation awarded in SMSF-related complaints ($130,186) is materially higher than non-SMSF complaints ($75,980). Most financial advice-related misconduct cases involve investment advice to SMSFs (87.29 per cent). These figures demonstrate that SMSFs are the primary driver of CSLR costs and that the current settings create a significant cross-subsidisation dynamic whereby the broader financial services sector funds losses predominantly arising from SMSF-related advice.

SMSFs are, by their nature, self-managed. Establishing an SMSF is an active decision to step outside the APRA-regulated environment and into a self-directed structure. SMSF trustees assume direct control over their fund's investment strategy and accept the associated risks and regulatory responsibilities. The ABA acknowledges the options paper's important distinction between investment risk and misconduct risk. However, the scale of SMSF-related claims on the CSLR, and the consequent levy burden on unrelated sub-sectors, warrants a recalibration of the scheme's scope.

Further, any exclusion should be accompanied by enhanced disclosure obligations requiring financial advisers to clearly disclose to consumers, at the point of establishing an SMSF, that CSLR compensation will not be available for losses suffered by the SMSF.

If the Government does not proceed with full exclusion, the ABA considers that SMSFs should contribute to the scheme, and Treasury should ensure that any contribution model does not create moral hazard. However, the ABA's preference remains exclusion of SMSFs from CSLR eligibility on simplicity and administrative ease grounds.

Proposal 7: Levying the managed investment scheme sector

The ABA supports a broad-based approach to levying the managed investment scheme sector under the CSLR special levy framework, rather than a risk-informed approach that seeks to distinguish between lower-risk and higher-risk schemes. Given the role that managed investment scheme failures have played in generating CSLR claims, the sector should contribute to the special levy framework on a broad basis.

A risk-informed model would add significant complexity and be difficult to operationalise. Determining which schemes should be treated as lower risk would be inherently contestable and could create reputational risk if a scheme regarded as lower risk were later to fail. A broad-based approach within the special levy framework is simpler, more transparent and easier to administer.

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

The ABA supports the policy objective of improving recovery of unpaid AFCA determinations within corporate groups. Unpaid determinations of an insolvent entity should not shift costs to unrelated sub-sectors via the special levy where related entities within the same corporate group have retained value from the respondent firm's business.

The collapse of Dixon Advisory has been referenced by stakeholders as a paradigm case where value was transferred to related entities while AFCA determination liabilities remained with the insolvent entity. The ABA supports measures that would address such arrangements and reduce the extent to which unrelated sub-sectors of the financial industry are required to fund unpaid determinations through the special levy.

The ABA supports Option 2: the creation of a related-entity liability mechanism, subject to appropriate safeguards. Such a mechanism should be enlivened only where a determination is unpaid and objectively unlikely to be satisfied by the respondent firm, the claim relates to a CSLR-eligible matter, and the related entity has retained or received a benefit connected to the respondent firm's relevant activities. The ABA supports the inclusion of safeguards to ensure liability is proportionate and does not undermine legitimate corporate structuring.

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Part B: Curbing lead generation activity

The ABA recognises the significant consumer harm that can arise from inappropriate lead generation practices, particularly in the superannuation sector, as highlighted by the Shield and First Guardian collapses. As the consultation paper recognises, lead generation can sit at the start of a broader chain involving advertising, data gathering, financial advice, superannuation switching and product distribution. The resulting harm is often driven by business models operating at the margins of the current framework, rather than by legitimate referral activity in and of itself.

For that reason, the ABA considers reform efforts should be directed to the measures most likely to be effective in practice. In our view, that means focusing on targeted accountability measures, carefully calibrated remuneration reforms and earlier regulatory intervention, rather than relying primarily on further extensions to the anti-hawking framework. Legislative reform alone will not be sufficient. Effective supervision and enforcement by ASIC will be critical, particularly in relation to lead generators and related entities that engage in misconduct or facilitate harmful conduct, especially in relation to higher-risk products and superannuation.

At the same time, reforms in this area should be calibrated carefully so they do not overreach and make genuine referral activity by AFSL holders or legitimate consumer engagement unnecessarily more difficult. The focus should remain on higher-risk lead generation models involving active consumer steering, warm transfers, high-pressure engagement or remuneration structures that distort incentives, without inadvertently capturing lower-risk activity such as legitimate intra-group referrals, ordinary customer referral pathways or the provision of factual information. It is also important that these reforms proceed alongside the Government's Delivering Better Financial Outcomes reforms. Improving access to affordable, high-quality advice remains a critical part of the policy response, and lead generation reform in isolation will not resolve the underlying drivers of consumer vulnerability.

Reform 1: Enhance accountability for the conduct of lead generation activities

The ABA supports licensing of lead generation activities under Reform 1, provided a suitably targeted definition of ‘lead generator’ is adopted that addresses the harm identified by Treasury. That definition should be framed to capture non-regulated entities whose primary business model involves actively generating and referring consumers in a manner that influences financial product acquisition or personal financial advice outcomes, particularly where this relates to higher-risk products or superannuation. In the ABA’s view, bringing those activities more clearly within the licensing framework would improve accountability, support record-keeping and supervision, and give ASIC stronger visibility over lead generators and related entities that engage in misconduct. At the same time, the regime should be calibrated carefully so it does not capture legitimate general marketing and advertising, education-led customer engagement, intra-group referrals, referrals relating to lower-risk products, the provision of factual information or general advice, or third-party distribution models that do not involve personal advice.

The ABA considers that proposed reforms should appropriately recognise the extensive existing obligations already imposed on AFS licensees under the current regulatory framework and should seek to minimise unnecessary duplication, overlap or conflict with existing licensing requirements.

The ABA is also concerned to ensure that reforms do not unnecessarily inhibit beneficial referrals of customers for personal advice, particularly given access to quality personal advice is already limited and costly. For example, reforms should not impede a customer of a banking group being referred within that group to a licensed financial adviser for assistance where the referral is part of an ordinary customer service pathway and does not involve high-pressure conduct, product steering or lead-selling practices. Of the options canvassed under Reform 1, Option 1a is the ABA’s preferred approach. By contrast,

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Options 1b, 1c and 1d are less preferred, as they are either more restrictive than necessary or less likely to materially improve outcomes compared with a suitably targeted licensing model.

Reform 2: Extend anti-hawking requirements

The ABA does not support further extensions to the anti-hawking framework as the primary mechanism for addressing harmful lead generation activity. The existing hawking prohibition under section 992A of the Corporations Act is already sufficiently restrictive. It applies to any offer of a financial product made in the course of, or because of, unsolicited contact with a consumer and is technology neutral, extending to real-time interactions including instant messages and AI-driven chatbots.

The consultation paper itself acknowledges that the issue is not the scope of the hawking prohibition per se, but rather the business models that have been designed to operate at its margins, including through the use of click-bait advertising to obtain broad consent and the 'cleansing' of unsolicited contact through the personal advice exemption. Further restricting the hawking prohibition, including by removing or limiting the personal advice exemption, may unnecessarily restrict the legitimate provision of financial advice without materially addressing the conduct of lead generators that operate outside the licensing framework.

The personal advice exemption exists because financial advisers are subject to the best interest duty, which provides a substantive consumer protection. Removing this exemption would impose significant regulatory burden on financial advisers, particularly those who advise on superannuation, and could reduce access to advice for consumers who would benefit from it. The ABA considers that the more effective approach is to address the conduct of lead generators directly.

Reform 3: Target remuneration structures that may incentivise poor conduct

The ABA supports targeted measures under Reform 3 that address remuneration structures that may incentivise poor conduct, particularly where those arrangements are closely connected to harmful lead generation and superannuation switching models and have the capacity to distort incentives in the advice process. In the ABA's view, there is a legitimate policy basis for bringing lead generators within the conflicted remuneration framework where remuneration arrangements create a clear risk of influencing personal financial advice or driving poor consumer outcomes. However, any reform should be carefully calibrated and should not involve broad changes that expand the conflicted remuneration framework in a way that captures ordinary commercial arrangements, client flows or other intangible benefits too broadly. The focus should remain on remuneration structures that create a real risk of poor consumer outcomes. Legitimate referral and distribution arrangements that form part of ordinary business activity, and do not compromise advice quality or objectivity, should not be brought within scope absent a clear nexus to poor advice outcomes or consumer harm. Any reform in this area should therefore preserve a clear and targeted connection between the remuneration practice and the risk the reform is intended to address.

Reform 4: Target advertisements for earlier intervention

The ABA supports Reform 4 in principle, particularly measures that strengthen ASIC's ability to intervene earlier to disrupt harmful advertising at the front end of the lead generation funnel. In the ABA's view, the preferable reform direction is to enhance ASIC's powers to address problematic advertisements before consumers are drawn further into harmful business models. More prescriptive disclosure-based measures are less likely to materially improve outcomes if they do not address the underlying business model or meaningfully assist enforcement. The key objective should be to ensure ASIC can act quickly and proportionately where advertising is being used to channel consumers into high-risk conduct.