

13 August 2021

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

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

Dear Sir/Madam

## Compensation Scheme of Last Resort

### Treasury Laws Amendment (Measures for Consultation) Bill 2021: Compensation Scheme of Last Resort

Chartered Accountants Australia and New Zealand (CA ANZ) has long advocated for industry reform to ensure that more consumers are able to access good quality, ethical and professional financial advice. We continue to advocate on behalf of our members and in the public interest at every opportunity.

We completely agree with a Compensation Scheme of Last Resort (CSLR). We do, however, have major concerns in relation to the structure of the proposed scheme and the way in which it is to be funded. We believe that if current proposals contained within this Bill are implemented, we will see significant cost increases which will inevitably need to be passed on to consumers. Additional costs will, in turn, make financial advice less affordable for many Australian individuals and small businesses at a time when so many desperately need it.

CA ANZ supports raising the standards of financial advice to better serve and protect consumers. We are wholeheartedly committed to helping the industry move forward and fix something that is clearly 'broken'.

We believe there is, and will continue to be, a need for trusted advisers to look after the financial advice needs of everyday Australians. This will be best served by retaining Chartered Accountants (CAs) in the financial advice industry and we will continue our efforts to support this, as any exodus of CAs is likely to significantly reduce the overall level of training and expertise in the industry.

If you would like to discuss our submission, please do not hesitate to contact Bronny Speed (Leader, Financial Advice) on (02) 8078 5442 or at [bronny.speed@charteredaccountantsanz.com](mailto:bronny.speed@charteredaccountantsanz.com).

Yours sincerely

**Simon Grant FCA**  
**Group Executive,**  
**Advocacy & Professional Standing**

## Introduction

The Government's overarching purpose in establishing a financial services compensation scheme of last resort (CSLR) is to support confidence in the financial system's dispute resolution framework. The CSLR will provide limited compensation where a determination issued by the Australian Financial Complaints Authority (AFCA) remains unpaid and the determination relates to a financial product or service within the scope of the scheme.

Recommendation 7.1 of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Royal Commission) stated that the three principal recommendations within the Ramsay Review to establish a CSLR should be carried into effect

## Background

The Supplementary Final Report of the Review of the financial system external dispute resolution framework (Ramsay Review) made recommendations on the establishment, merits and potential design of a CSLR. The Ramsay Review was finalised and presented to the Government on 6 September 2017.

The Ramsay Review noted existing redress arrangements are inadequate to ensure all consumers and small businesses are compensated for losses, especially in the circumstances where an external dispute resolution scheme, tribunal or court has found that there has been misconduct by a financial firm and makes an award in their favour. The Ramsay Review recommended:

1. Establishing a CSLR that targets the areas of the financial sector with the greatest evidence of need;
2. A CSLR, if established, be initially restricted to personal financial advice failures but be scalable in the future to include other types of financial service as the evidence of uncompensated losses arise; and
3. A CSLR, if established, be established with design features, including that the scheme prospective, *ex-ante* funded and accessible to consumers and small businesses.

### Summary of the proposed new law

*The levy framework creates a tax to be levied against relevant industry entities to fund the CSLR.*

*The main objective of the proposed CSLR is to provide a pathway for eligible consumers to receive compensation, flowing from an AFCA determination in their favour, where the financial firm has not paid the consumer in accordance with the determination.*

*The CSLR operates to create a pool of funds from which eligible claimants who have suffered loss or damage as a result of inappropriate action of a financial firm can access compensation even if, for example, the financial firm has become insolvent.*

*The CSLR will be administered by the operator, which is a company that meets the operator requirements and is authorised by the Minister. Under the scheme, a complainant who has been provided a determination by Australian Financial Complaints Authority will be able to seek the determined compensation, up to \$150,000, from the operator.*

### CA ANZ response

CA ANZ continues to advocate and support the professionalism of the financial advice industry. We support the CSLR concept as an important measure to ensure consumer protection and believe the CSLR is an important component of providing professional financial services. However, we do not support the CSLR in its current proposed form and would like to contribute to improvements.

CA ANZ is very concerned with the overwhelming recent increase of regulatory costs that are driving current advisers out of the advice space as they find the current climate not sustainable. This is a concerning trend, as increasing costs to provide advice are leading to inevitable increases in the cost of advice for clients at a time when more and more clients want and need access to affordable advice.

CA ANZ, however, remains of the view that the CSLR may be a necessary consideration to ensure that consumers who have received inappropriate advice are appropriately remediated and compensated where appropriate. Importantly, this includes the opportunity for redress in situations where the licensee responsible for the advice has become insolvent.

# Chapter 1

## Establishment of the operator

Proposed law:

*The Federal Government has released draft legislation to establish a Compensation Scheme of Last Resort (CSLR) to assist in the dispute resolution framework of the financial advice industry to compensate Australians who have received a favourable Australian Financial Complaints Authority (AFCA) determination who are yet to be paid. This is to be done through the new scheme once all other avenues have been exhausted.*

### CA ANZ response

CA ANZ fully supports government initiatives to protect consumers and provide compensation when genuine complaints have been agreed to; yet are still to be paid.

We do, however, have some concerns with the current proposal and for CA ANZ to fully support a CSLR, we would like to see the following issues addressed:

1. The level of levy requested from advisers needs to be sustainable, particularly for smaller and medium sized businesses who have been overwhelmed with ever increasing regulatory costs that are making the cost of running a sustainable advice business prohibitive. This is particularly relevant for smaller licensees/ limited licensees with relatively low fee bases, as they are seriously considering exiting the financial advice space.
2. There is also an issue arising from the prevalence of COVID lockdowns in parts of Australia: many advisers have experienced declining incomes. The implementation timeframes should take account of the stage our nation has reached in terms of COVID recovery.
3. The quantum of the proposed CSLR is considered to be quite high and the calculation of the levy needs to be made clear.
4. Ensuring the CSLR is not overwhelmed or overburdened with high and unnecessary administrative costs, including the proposed reimbursement of AFCA fees, as a CSLR should purely be to fund clients who have not been compensated for poor advice or product failures.
5. The CSLR should literally be a scheme of last resort for clients who can be remediated in no other way.
6. The possibility of the scheme becoming a potential moral hazard needs to be addressed, as this could be a consequence of the currently proposed CSLR. As an example, licensees who may otherwise have been captured by the scheme may start to reduce their number of advisers to ensure they are no longer captured by the scheme.
7. The need to include product providers, as in the past, product failures have led to compensatory action. Product providers should be included in the scheme to add to the reserves available for clients who have been impacted by product failures. The current proposal places an unfair burden on the advice component of the industry.
8. Incorporating PI Insurance reform to ensure the proposed CSLR is workable with the PI insurance system, so that insurance may cover claims either in full or in part and should at least cover some regulatory expenses.

## Payments made by the CSLR operator

Proposed law:

*Once authorised, the CSLR operator is empowered to administer payments, independent of the Government. These include reimbursing operating costs (including reimbursement of unpaid AFCA fees), as well as making payments to eligible applicants (compensation payments).*

### CA ANZ response

CA ANZ supports the general concept of having a CSLR to ensure that consumers who may have received inappropriate advice or have invested in inappropriate products, are appropriately remediated and compensated where needed and are provided with an opportunity for redress, including in situations where the licensee responsible for the advice has become insolvent.

AFCAs costs may be central to the ongoing operation of AFCA, but they should not be the responsibility of financial advisers. Importantly, advisers who do the right thing should not have to foot the bill for those who don't, and product manufacturers whose products either fail or perform poorly should have to share the load of this proposed scheme.

The way the proposed scheme is structured could lead to it being used as a 'nice-to-have' option, rather than a last resort. We do not believe this is good for the industry, as it will lead to an increase in claims which will require further funding – thus placing additional costs onto the provision of financial advice. Any additional costs ultimately lead to less Australians being able to access advice, right at a time when more and more consumers actually need affordable financial advice.

CA ANZ is also of the view that the CSLR needs to be aligned to potential PI reform to ensure efficiencies are gained across the whole financial services industry and that financial advisers, product providers and insurers all carry some responsibility for situations when clients require compensation.

## Powers of the CSLR / Regulating the CSLR

Proposed law:

*The CSLR operator has the power to obtain information that is relevant to the operation of the scheme. This power to gather information extends to giving information and producing documents. It also applies to any person whom the operator believes is connected to a claim, except ASIC.*

*ASIC may issue a written notice to the CSLR operator if the operator does not comply with the mandatory requirements that apply to the operator (see above), conditions set by the Minister at the time of authorisation, or other regulatory requirements set by ASIC.*

### CA ANZ response

CA ANZ is concerned that ASIC is currently being deluged with new systems and processes resulting from Royal Commission recommendations, in particular components of the 'Better Advice Bill'. Given our view that the CSLR needs further clarification prior to finalisation, we strongly recommend that time is spent on this proposed scheme to make it workable, prior to ASIC being given any further regulatory responsibilities.

## Chapter 2

### Annual levy/ revised estimate of levy/ AFCA's unpaid fees

Proposed law:

**Annual Levy** - *The annual levy is payable by a person if the person is a member of a sub-sector and, if conditions are prescribed in the regulations, the conditions are met in relation to the person, and the person is not in a class of persons prescribed in the regulations. The levy will be imposed on a person if the person meets these criteria at any time in the 12 months preceding the levy period. What constitutes a sub-sector for the purposes of the annual levy will be prescribed in the regulations and will draw on concepts used in the ASIC supervisory cost recovery levy framework. If a person is a member of more than one sub-sector for the same levy period (and meets the other conditions prescribed, if any), they would be subject to the annual levy in relation to each of those sub-sectors for the levy period.*

**Revised estimate of annual levy** - *If at any time during a levy period, the annual levy collected for a sub-sector is insufficient or is likely to be insufficient to meet the actual or estimated claims payable for the sub-sector, the CSLR operator may recalculate the amounts included in the initial estimate of claims and costs and determine a revised estimate of claims and costs for the levy period and sub-sector. Where a revised estimate of claims and costs would not exceed the sub-sector cap for a particular sub-sector for the relevant levy period, the CSLR operator may, by legislative instrument, determine a revised estimate of claims and costs. A further levy is imposed on the sub-sector where such a determination is made.*

**AFCA's unpaid fees** - *AFCA operates as a not-for-profit entity and provides its services free of charge to its complainants. As such, AFCA is funded by the complaint handling fees charged to AFCA members (that is, financial firms) upon a resolution of a complaint. Where the financial firm is unable or otherwise unwilling to pay these complaint handling fees, the fees remain unpaid; or if the firm is insolvent, may be in part recoverable by AFCA in an administration process.*

**Ministerial determination** - *The amount of annual levy payable in an upcoming levy period depends largely on the CSLR operator's estimate of the compensation claims and costs for the period. While the CSLR operator will engage with AFCA to inform this estimation, the forward-looking nature of the levy framework limits its ability to model for events that cannot be forecasted or accurately estimated ahead of time. For example, the sudden failure of a large financial firm could lead to a significant increase in the number of complaints to AFCA, and consequently an increase in the number of applications under the CSLR.*

#### CA ANZ response

The Federal Government regularly states that it is committed to reducing red tape to cut the cost of doing business. CA ANZ believes the funding of the proposed CSLR will add additional red-tape with significant associated additional costs and, as such, we would like to see amendments to this Bill.

CA ANZ has seen the pain caused by the manner in which the ASIC Industry Funding Levy has been implemented and does not want to see an exacerbation of the problems advisers have already experienced, with the implementation of the CSLR.

Escalating regulatory costs have already caused a mass exodus of advisers from the industry, as advisers of small and medium businesses simply can't afford ever-increasing rising costs.

The unknown quantum of the levy is particularly frustrating for advisers, and it appears as if the manner in which the additional levy to cover the CSLR is potentially calculated will also be open to estimates and re-estimates with no certainty for advisers.

# Levy for accumulated AFCA unpaid claims and unpaid fees

## Proposed law:

*The levy framework provides for the levy to be collected to fund compensation for unpaid relevant AFCA determinations that have accumulated since the beginning of the AFCA Scheme (1 November 2018) and up to the commencement of the CSLR ('accumulated unpaid claims').*

*Related to the accumulated unpaid claims are the fees that AFCA has incurred in relation to handling these claims where the fees have not been paid by the liable financial firms ('AFCA accumulated unpaid fees'). The levy framework also provides for the levy to be collected for these AFCA fees.*

*The levy for both the accumulated unpaid claims and AFCA accumulated unpaid fees is collected as a one-off levy in the initial levy period only. AFCA determinations no longer continue to "accumulate" after the commencement of the CSLR.*

## CA ANZ response

CA ANZ believes this is grossly unfair to those remaining in the industry. Adviser numbers have dropped from the high twenty-thousands to now under 20,000, with the predominant source of those leaving the industry coming from the major banks and AMP. Remaining advisers are now being asked to fund a levy that compensates a high level of regulatory action taken since 2018 against the major banks and AMP, with many advisers from those groups no longer being in practice.

In addition, to ask those remaining on the Financial Adviser Register (FAR) to fund unpaid AFCA claims and associated accumulated AFCA expenses for previous misdemeanors is wrong, and in the view of CA ANZ, is inappropriate government policy.

We have previously noted the fact that advisers are leaving the industry in droves, partly due to soaring compliance costs. The proposed method of funding unpaid AFCA claims and costs will almost certainly see further adviser departures which is detrimental to the many Australians who need affordable advice.

# Appendix A

## About Chartered Accountants Australia and New Zealand

Chartered Accountants Australia and New Zealand (CA ANZ) represents more than 130,000 financial professionals, supporting them to build value and make a difference to the businesses, organisations and communities in which they work and live.

Around the world, Chartered Accountants are known for their integrity, financial skills, adaptability and the rigour of their professional education and training.

### In summary:

Across the country, in local communities and large cities, CAs are seen as a trusted and educated group of financial professionals who are working every day to serve the interests of individual and businesses in the Australian economy.

### Being highly qualified

As well as relevant degree-level study, all our members have completed a minimum of three years approved and mentored relevant work experience. CAs have an Australian or New Zealand approved degree at AQF7, or an overseas equivalent, and a TEQSA approved AQF8 post-graduate qualification which requires rigorous study.

### Significant continuing professional development obligations

Significant ongoing professional development requirements ensure CAs skills and knowledge remain current and relevant. Members are required to complete a minimum of 120 hours of relevant training during a three-year period. This is monitored through audits for a selection of members as well as annual declarations from all members.

### Broad experience

Our members are accountants who can offer far more than technical knowledge. CAs are broadly experienced in dealing with business and financial issues across a diverse range of management and advisory roles. This bigger picture, holistic perspective enables them to work flexibly to positively impact businesses, organisations and communities.

### Fully accredited

Our members have all met, and are bound by, internationally recognised technical and ethical standards. CA ANZ is part of the Global Accounting Alliance - the coalition of the world's premier accounting bodies.

### Future-focussed

Whether working in business or practice, CAs are uniquely positioned to offer advice that can be trusted. Through deep understanding they have the skills to examine the past and guide organisations into the future.

### Highest ethical and professional standards

Members are required to adhere to a strict code of ethics included in the Accounting Professional & Ethical Standards Board's Code of Ethics for Professional Accountants (including Independence Standards) (APESB 110). They are also required to comply with detailed CA ANZ regulations which maintain high levels of professional standards.



**Protection to consumers and members through the Professional Standards Scheme**

All members in public practice must meet the requirements of the CA ANZ Professional Standards Scheme. This includes having minimum levels of professional indemnity insurance and appropriate disclosure of the limitation of liability under the scheme. This offers protection to both our members and their clients.

**Quality Review Program**

The CA ANZ Quality Review Program reviews practices on a cyclical basis and examines each practice's compliance with technical and professional requirements, including compliance with the professional standards scheme. The program monitors whether our members in public practice have quality control systems in place to ensure they comply with the Code of Ethics, professional standards, and legal and regulatory requirements. All members offering services to the public are eligible for review. This helps maintain a consistently high standard of quality and service to their clients.

**Conduct and disciplinary processes**

There are robust disciplinary processes to hold members to account who may not comply with high professional and ethical standards. This includes investigating and resolving complaints made against members. Sanctions imposed on members can include termination or suspension of membership, a censure, training and costs.