

Submission

22 May 2026

CSLR Post-Implementation Review
The Treasury
Langton Crescent
PARKES ACT 2600

Via email: CSLR@treasury.gov.au

Dear Manager,

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

The National Insurance Brokers Association (NIBA) welcomes the opportunity to respond to Treasury's Options Paper on reforms to support the ongoing sustainability of the Compensation Scheme of Last Resort.

NIBA supports the CSLR's purpose. Consumers who suffer loss through financial sector misconduct and who hold an unpaid determination after every other avenue has been exhausted deserve an effective avenue for redress. A scheme that delivers that redress promptly and predictably is in the interests of consumers and of confidence in the financial system as a whole.

NIBA also supports the objective stated throughout the Options Paper: that the scheme's costs should be allocated fairly, that the scheme should remain a genuine mechanism of last resort, and that funding should reflect connection to the losses. NIBA's submission supports, or supports with refinements, each of the proposals in the paper, and asks that the proposed special levy framework be designed so that its funding arrangements reflect the connection principle consistently.

NIBA's recommendations are set out in full in the attached submission. NIBA would welcome the opportunity to discuss this submission further.

T: +61 2 9964 9400
E: info@niba.com.au

Suite 4.01B, Level 4,
31 Market Street, Sydney
NSW 2000

Yours sincerely,



Richard Klipin

Chief Executive Officer

National Insurance Brokers Association

Executive Summary

Consumers are best served by a Compensation Scheme of Last Resort that is sustainable, pays genuine last-resort claims promptly, and is fairly funded. When the cost of the scheme is allocated to sectors that did not cause the losses, that cost is ultimately carried by the consumers those sectors serve — in the case of the broking profession, by the Australian businesses and households who rely on broker advice to obtain and maintain appropriate insurance cover.

NIBA's response to the Options Paper rests on two principles, both of which the Options Paper itself adopts.

Funding should follow connection to the losses. The Options Paper states that special levy costs should be allocated by reference to a sub-sector's connection to the underlying losses (paragraphs 84 and 88–94). NIBA supports that principle and urges its consistent application. The proposed three-tier waterfall (Proposal 5) reflects the connection principle in its first two tiers. Its third tier, however, allocates costs to every retail-facing licensed sub-sector as a backstop, based on the scheme's shared benefits rather than connection to losses. NIBA's submission asks the Government to consider whether the connection principle should also inform the design of that final tier.

Recovery should come before levy. Every dollar the scheme recovers from a failed firm, its professional indemnity insurer, or a related entity that benefited from its business is a dollar that does not need to be levied on compliant firms. It therefore does not flow into the cost of financial services for consumers. NIBA supports the proposals in the paper directed at recoveries and at keeping the scheme to its last-resort purpose: deducting all relevant amounts from compensation (Proposal 1), expanding subrogation rights (Proposal 2), recovering from related entities within corporate groups (Proposal 8), and reforming the treatment of counterfactual loss so the scheme restores consumers rather than funds investment returns they did not receive (Proposal 4).

NIBA supports, or supports with refinements, every proposal in the Options Paper. NIBA's one substantive recommendation for reconsideration concerns the design of the Tier 3 backstop in Proposal 5. NIBA's positions on each of the eight proposals and four recommendations for reform beyond the eight proposals are set out below.

T: +61 2 9964 9400
E: info@niba.com.au

Suite 4.01B, Level 4,
31 Market Street, Sydney
NSW 2000

About NIBA

The National Insurance Brokers Association (NIBA) is the peak body for the insurance broking profession in Australia, representing more than 380 member firms and over 14,000 individual brokers across the country. NIBA's membership encompasses a diverse range of entities, including large multinational insurance brokers, Australian broker networks, and small and medium-sized businesses located in cities and regional areas around Australia.

Insurance brokers are licensed financial services professionals who act on behalf of their clients — not insurers. They assess a client's risks and needs, source appropriate coverage from across the market, negotiate terms and premiums, and advocate for their clients throughout the claims process.

The broking profession operates under the Corporations Act 2001, holds Australian Financial Services Licences regulated by ASIC, maintains professional indemnity insurance as required by ASIC Regulatory Guide 216, and subscribes to the Insurance Brokers Code of Practice — an enforceable, independently monitored code of conduct.

NIBA's advocacy is guided by three strategic pillars: Advocacy, Professionalism, and Community. We advocate for policy and regulatory settings that support the delivery of quality professional advice to Australians, recognising that the broking profession exists to add value to customers through professional advice and support.

Summary of Recommendations

Recommendation 1. NIBA recommends that the design of the special levy waterfall (Proposal 5) apply the connection principle consistently across all three tiers, so that the framework's funding arrangements reflect a sub-sector's connection to the losses the scheme compensates.

Recommendation 2. NIBA recommends that the per-sub-sector caps proposed for the backstop tier be calibrated so that they remain proportionate to a sub-sector's exposure to losses, recognising that, for some retail-facing sub-sectors, that exposure is negligible.

Recommendation 3. NIBA supports expanding the CSLR operator's subrogation rights (Proposal 2, Option 2), and recommends that reform include nationally consistent legislation enabling direct recovery against professional indemnity insurers, and a prohibition on professional indemnity policy terms that exclude or defeat claims by the CSLR operator.

Recommendation 4. NIBA supports enabling the CSLR operator to deduct all relevant amounts a claimant receives in connection with the matters covered by a determination (Proposal 1).

Recommendation 5. NIBA supports improving recovery of unpaid AFCA determinations within corporate groups (Proposal 8), including a proportionate related-entity liability mechanism subject to appropriate safeguards.

Recommendation 6. NIBA supports reform of the treatment of counterfactual loss for CSLR-eligible complaints (Proposal 4) toward a capital-loss or conservative prescribed-benchmark basis.

Recommendation 7. NIBA supports the technical improvements proposed in Proposal 3 and recommends that priority be given to the proposal to prevent payments for unauthorised conduct and for products or services that fall outside the scope of the CSLR.

Recommendation 8. NIBA supports bringing genuinely connected sub-sectors — including self-managed superannuation funds (Proposal 6) and managed investment scheme responsible entities (Proposal 7) — into the funding framework on a connection-based or risk-informed basis.

Recommendation 9. NIBA recommends that the Government progress reform of the professional indemnity insurance framework in tandem with CSLR reform, so that professional indemnity insurance operates as the genuine first line of defence and the CSLR is reached only as a true last resort.

Recommendation 10. NIBA recommends that enhanced data-sharing between AFCA, ASIC, APRA and the CSLR operator be developed as an upstream prevention strategy to identify at-risk licensees before they collapse.

Recommendation 11. NIBA recommends that the long-term sustainability of the CSLR be addressed primarily through upstream reform — licensing gatekeeping, managed investment scheme governance, and platform accountability — to address the reasons scheme costs arise.

Recommendation 12. NIBA recommends that, for the CSLR special levy, an entity classified into more than one sub-sector be levied once — under the single sub-sector that reflects its principal regulated activity — rather than separately in each sub-sector whose licence authorisations it spans.

Part 1 — Two principles for a sustainable scheme

The Options Paper observes (paragraph 4) that the CSLR “sits at the end of a chain of events that begin upstream.” Costs crystallise at the scheme level due to failures in product design, distribution, licensing oversight, superannuation switching, and managed investment scheme governance. NIBA agrees with that observation. It has two consequences for how the scheme should be funded.

First, **funding should follow connection**. The Options Paper makes this principle explicit in its design of the special levy waterfall: costs should be allocated by reference to “the relative connection of sub-sectors to the underlying losses” (paragraph 84), on a basis of connection rather than fault (paragraph 89). NIBA supports that principle. The fairness of the scheme depends on it. A sub-sector that is connected to the losses — through the products it issues, the advice it gives, or the distribution pathway it provides — can fairly be asked to contribute. The more carefully the framework reflects connection, the more defensible and durable it will be.

Second, **recovery should come before levy**. A scheme of last resort should pursue recoveries from those responsible for, or who benefited from, the loss before it calls on the broader industry. The Options Paper contains a strong set of proposals directed at exactly this — Proposals 1, 2 and 8 — and NIBA supports them. The more the scheme recovers, the less it must levy; and the less it levies on compliant firms, the less of the scheme’s cost is passed through into the price consumers pay for advice.

NIBA’s responses to the eight proposals consistently apply these two principles.

Part 2 — Response to the eight proposals

Proposal 1 — Enabling CSLR to deduct payments from compensation

NIBA supports Proposal 1.

A scheme of last resort should not pay compensation for a loss that has already been met through another avenue. Where a claimant has received, or will receive, payment through a class action, a deed of company arrangement, insurance proceeds, or retained assets connected to the same matters, the CSLR’s compensation should be reduced accordingly. This is consistent with the scheme’s last-resort character and with the recover-before-you-levy principle: amounts not paid twice are amounts not levied on compliant firms.

On the timing question raised in the consultation (Appendix A, Proposal 1, Question 2), NIBA’s view is that the reform should not delay payment of a genuine consumer claim. The CSLR

operator should retain the flexibility to pay promptly and to apply a clawback mechanism where a deductible amount becomes known or quantifiable only after payment. A targeted clawback is preferable to holding consumer compensation pending the resolution of external processes that may take years.

Proposal 2 — Expanding CSLR subrogation rights

NIBA supports Proposal 2 and supports Option 2.

This is, in NIBA's view, the most important proposal in the paper for the long-term fairness of the scheme. Recoveries under the current subrogation framework have been minimal — the Options Paper records that, although the CSLR operator has submitted proofs of debt where appropriate, it has received only one distribution, of \$18,129.33 (paragraph 17). A scheme that recovers very little from those connected to the losses, and instead funds compensation through levies on compliant firms, is not yet operating as the recoveries-supported scheme of last resort it was intended to be.

NIBA supports Option 2 — expanding the subrogation right to a broader set of recovery sources, including the professional indemnity insurers of failed firms and entities that are not Chapter 5 bodies corporate. The international evidence supports this approach: the United Kingdom's Financial Services Compensation Scheme has recovered more than £310 million from failed firms since 2015–16 (paragraph 28), on the strength of a broader and more flexible recovery model.

NIBA makes two recommendations to strengthen Proposal 2:

- **Nationally consistent legislation.** The Options Paper notes (paragraph 18) that direct recovery pathways currently depend on non-uniform state and territory laws. NIBA recommends that the Government enact nationally consistent legislation enabling the CSLR operator to pursue recovery directly from the professional indemnity insurer of a failed firm. As the peak body for a profession whose business includes the holding and arranging of professional indemnity cover, NIBA's view is that where a firm has failed, and a valid claim exists, the firm's professional indemnity policy is the appropriate source of recovery, ahead of a levy on compliant firms.
- **Prohibiting policy terms that defeat recovery.** A recovery right is only as effective as the policies it can be enforced against. NIBA recommends that professional indemnity policies be prohibited from containing terms that exclude, or have the practical effect of defeating, a claim by the CSLR operator. Without this safeguard, an expanded statutory recovery right can be written around in the policy.

On the consultation's question whether legislative reform is justified given limited recoveries to date (Appendix A, Proposal 2, Question 2): NIBA's view is that it is. Recoveries are limited in part because the current framework is limited. The UK experience indicates what a properly designed recovery model can achieve. The reform is worthwhile even if recoveries prove modest, because a scheme funded substantially through recoveries is fairer and more sustainable than one funded substantially through levies on the compliant.

Proposal 3 — Technical improvements

NIBA supports the technical improvements proposed in Proposal 3.

The proposals to allow payments to multiple accounts, to align non-participant exemptions across annual and special levies, to define the entity metric for market participants, to align disallowance periods, and to align special levy imposition with the qualifying period are sound administrative improvements that support the consistent and efficient operation of the scheme.

NIBA particularly supports, and recommends that priority be given to, the proposal to **prevent payments for unauthorised conduct and for products or services that fall outside the scope of the CSLR**. A scheme of last resort should compensate only for in-scope, authorised conduct. Enabling the operator to deduct or exclude amounts attributable to unauthorised or out-of-scope components of a determination keeps the scheme aligned with its intended purpose and is consistent with the recover-before-you-levy principle.

Proposal 4 — Revising the treatment of counterfactual loss

NIBA supports reform of the treatment of counterfactual loss for CSLR-eligible complaints.

A scheme of last resort should restore consumers to the position they were in, rather than deliver the investment returns they would have received from properly given advice. As the Options Paper records (paragraph 31), a counterfactual methodology can produce compensation that materially exceeds the consumer's actual capital loss, particularly over long investment horizons and where loss is assessed product-by-product rather than across the consumer's portfolio.

NIBA supports reform toward either a capital-loss basis (Option 1) or a conservative prescribed benchmark (Option 2). Both better align the scheme with its safety-net purpose. The Options Paper's own illustrative analysis (Table 2) indicates these options would reduce CSLR outlays on the sampled cases by between 25 and 43 per cent. That is a material

sustainability gain. A scheme that costs less to run levies less on compliant firms, and is less likely to require the large special levies that the Proposal 5 framework is designed to manage.

If a benchmark approach is adopted, NIBA's preference is for a conservative, market-linked rate — the 10-year Australian Government bond rate is a more defensible reference point for a last-resort scheme than a measure intended to replicate the returns of a more suitable investment portfolio. NIBA notes the reform should be designed so that it does not reduce compensation below a consumer's actual capital loss.

Proposal 5 — Embedding greater certainty in the special levy framework

NIBA supports the introduction of a more predictable, rules-based special levy framework. NIBA recommends that the connection principle, which the Government has adopted for the first two tiers of the proposed waterfall, also inform the design of the third tier.

NIBA agrees that the current approach to special levies — allocating large funding shortfalls by reference to ASIC regulatory effort — produces outcomes that are difficult to defend as fair where shortfalls are large. NIBA supports replacing it with a more predictable, rules-based framework. Certainty in levy arrangements is valuable for every participant in the financial system.

NIBA's submission on this proposal concerns the design of the third tier. The Government has framed the waterfall around the connection to the losses. Tier 1 levies the primary sub-sector whose costs have exceeded. Tier 2 levies apply to sub-sectors — those whose products or services form part of the pathway to harm. Both tiers implement the connection principle. The third tier allocates a remaining shortfall across all other retail-facing licensed sub-sectors as a backstop, on the basis of the shared benefits of the scheme rather than connection to the particular losses (paragraph 87).

NIBA's submission is that this design warrants reconsideration in one respect: how it would apply to sub-sectors that have no connection to the losses the CSLR compensates. The CSLR is funded, through its annual levy, by four sub-sectors: financial advice licensees, credit intermediaries, credit providers, and securities dealers. The general insurance broking profession is not one of them. The scheme's compensable scope does not extend to general insurance broking, and broker-channel conduct cannot give rise to a CSLR-eligible claim. Insurance brokers are accordingly not annual levy payers. They are reached by the CSLR only through the special levy, which the proposed Tier 3 backstop would extend across all retail-facing licensed sub-sectors — including the insurance product distribution sub-sector, under which insurance brokers are levied in ASIC's industry funding model.

T: +61 2 9964 9400
E: info@niba.com.au

Suite 4.01B, Level 4,
31 Market Street, Sydney
NSW 2000

In Treasury's own illustrative apportionment (Table 3), that sub-sector accounts for 0.41 per cent of the special levy. The point NIBA wishes to make is one of principle rather than quantum: the Tier 3 backstop, as drafted, would allocate a share of scheme costs to a sub-sector whose products fall outside the compensable scope of the CSLR and cannot, in turn, give rise to a claim on the scheme. That outcome would sit in tension with the connection principle adopted by the Government for the rest of the framework. It matters more as scheme costs grow: the 2026–27 funding task could approach \$252 million for the financial advice sub-sector alone if Shield and First Guardian costs were included in a revised estimate, and the larger the shortfall, the more is allocated through the tiers to the backstop. Costs allocated to the broking profession in this way are ultimately carried by the consumers it serves, through the cost of the advice on which Australian businesses and households rely.

NIBA's recommendations on Proposal 5 are:

- **Apply the connection principle consistently.** If connection to the losses is the appropriate basis for Tiers 1 and 2, NIBA submits that it should also inform Tier 3. Allocation within the backstop tier should reflect connection to the losses, and the Government should give particular consideration to sub-sectors whose products fall outside the compensable scope of the scheme and whose conduct cannot generate a CSLR-eligible claim.
- **Calibrate the Tier 3 caps accordingly.** The proposed per-sub-sector caps should be calibrated so that they remain proportionate to a sub-sector's connection to the losses, recognising that, for some sub-sectors, that connection is negligible.

NIBA supports the broking profession, contributing to the costs of misconduct to which it is genuinely connected. NIBA's submission is simply that the special levy framework should give effect to the connection principle consistently, in its third tier as in its first two.

Proposal 6 — The role of SMSF losses

NIBA supports bringing self-managed superannuation funds within the funding framework on a connection basis (Option 1).

This is not an area of NIBA's expertise, and NIBA offers its view on the principle rather than the mechanics. The Options Paper records that SMSF complainants account for around 93 per cent of paid and pending CSLR cases (paragraph 130). Applying the connection principle that runs through this submission, a cohort connected to the substantial majority of the scheme's costs can fairly be asked to contribute to its funding. NIBA supports the principle of Option 1.

T: +61 2 9964 9400
E: info@niba.com.au

Suite 4.01B, Level 4,
31 Market Street, Sydney
NSW 2000

NIBA notes the corollary. Every sub-sector or cohort genuinely connected to the losses that contribute to funding reduces the residual that must be found elsewhere, and therefore reduces the extent to which a backstop tier needs to be relied upon. Connection-based funding supports the scheme's overall sustainability.

Proposal 7 — Levying of MIS-related losses

NIBA supports a risk-informed approach to levying the managed investment scheme sector (Option 2).

Applying the connection principle again: a risk-informed levy that targets the segments of the MIS sector connected to claims, and excludes genuinely lower-risk schemes, better reflects connection to the losses than a broad-based levy applied without regard to it. NIBA acknowledges the data limitations the paper identifies, and supports the development of the data needed to operate a risk-informed model over time.

Proposal 8 — Recovery of unpaid determinations within corporate groups

NIBA supports Proposal 8.

Where a respondent firm fails while related entities in the same corporate group continue to operate and retain value derived from that firm's business — its advisers, clients, contractual rights or goodwill — the cost of the unpaid determination should not simply pass to the broader sub-sector. NIBA supports both refinements to existing frameworks that deter asset shifting and the creation of a proportionate related-entity liability mechanism, subject to the safeguards the paper proposes. This is the recover-before-you-levy principle applied to corporate-group structures, thereby reducing the levy burden on compliant firms.

Part 3 — Reform beyond the eight proposals

This consultation forms part of a post-implementation review. NIBA offers three observations that go beyond the eight proposals but, in NIBA's view, are central to the scheme's long-term sustainability. NIBA serves as the peak body for a profession whose business is professional indemnity insurance and risk management.

Professional indemnity insurance should be the genuine first line of defence. When professional indemnity insurance functions as intended, a consumer who suffers loss through a licensee's misconduct is compensated through that licensee's insurance, and the CSLR is not reached. A CSLR under escalating cost pressure is, in part, a consequence of a professional indemnity framework that is not consistently delivering that outcome. NIBA recommends that the Government progress its December 2025 consultation on the role of

professional indemnity insurance in tandem with CSLR reform. NIBA's February 2026 submission to that consultation set out the structural issues — exclusions creep, run-off cover, the level at which cover is held, and the alignment between AFCA determinations and policy coverage — and NIBA does not repeat them here. The point of this consultation is that the sustainability of the CSLR cannot be addressed in full while the first line of defence remains unreformed.

Data-sharing should be developed as an upstream prevention strategy. The Options Paper treats data-sharing between AFCA, ASIC and the CSLR operator as an administrative enabler of the waterfall and the related-entity mechanism. NIBA recommends it be developed more deliberately, as a prevention strategy. Cross-referencing CSLR claims data, AFCA complaint volumes, professional indemnity market data, and ASIC and APRA supervisory intelligence would assist regulators to identify at-risk licensees before they collapse. A failure prevented is a determination never made and a claim never paid.

Sustainability should be addressed upstream. The Options Paper's own observation is that the CSLR sits at the end of a chain that begins upstream. It follows that the durable response to the scheme's cost lies upstream: stronger licensing gatekeeping, reform of the managed investment scheme's governance, and platform accountability. Broadening the levy base addresses who pays without addressing why the costs arise. NIBA offers this observation constructively. Addressing the upstream causes of CSLR costs is what will keep the scheme sustainable — and a sustainable, fairly funded scheme is what keeps the cost of advice, including the broking advice consumers and businesses rely on, from unnecessarily rising. NIBA encourages the Government to direct its reform effort at the upstream causes of CSLR cost, and to design the funding model so that costs are met, as far as possible, by those connected to the losses and by recoveries from those responsible for them.

A single entity should be levied once, under its principal classification. The CSLR special levy is apportioned across sub-sectors defined in the ASIC industry funding model, which the scheme draws on based on the authorisations an entity holds, rather than the business it conducts. A single Australian financial services licence is commonly authorised for several related activities: for an insurance broker, typically both dealing in general insurance and advising on it. The consequence is that one entity, providing what is in substance a single set of services to its clients, can be classified into two or more sub-sectors. It is then subject to a separate special levy in each and, under the proposed waterfall, potentially to a levy call at more than one tier for the same underlying business. This is an artefact of how the sub-sectors are drawn; it does not reflect any additional connection to the losses the scheme compensates. NIBA recommends that, for the CSLR special levy, an entity classified into more than one sub-sector be levied once — under the single sub-sector that reflects its principal regulated activity — rather than separately in each sub-sector whose licence authorisations it happens to span. This removes an unintended multiplication of cost, keeps the special levy aligned with the connection principle (one business, connected to the losses in one way,

contributing once), and avoids a charge that, like any unnecessary regulatory cost, is ultimately reflected in the price of advice to consumers.

Closing

NIBA supports the CSLR and supports reform that makes it sustainable. NIBA supports, or supports with refinements, every proposal in the Options Paper — in particular, the proposals directed at recoveries, at scope discipline, and at connection-based funding. NIBA's one substantive recommendation for reconsideration is that the connection principle adopted by the Government for the special levy waterfall be applied consistently to the design of its final tier. NIBA's interest, and the interest of the consumers the broking profession serves, is in a CSLR that remains what it was designed to be: a genuine scheme of last resort, funded fairly, and reached only when every other avenue has been exhausted.

T: +61 2 9964 9400
E: info@niba.com.au

Suite 4.01B, Level 4,
31 Market Street, Sydney
NSW 2000