

Submission

2 October 2026

Compensation Scheme of Last Resort consultation
The Treasury
Langton Crescent
PARKES ACT 2600

By online submission: consult.treasury.gov.au/c2026-805258

Dear Sir or Madam,

Re: Compensation Scheme of Last Resort: application of the waterfall framework for the 2026–27 special levy

The National Insurance Brokers Association (NIBA) welcomes the opportunity to respond to Treasury's consultation paper on the 2026–27 special levy.

NIBA is the peak body for the insurance broking profession, representing 380 member firms and more than 14,000 individual brokers. Brokers act for their clients rather than for insurers. They are regulated under the *Corporations Act 2001*, operate under an Australian Financial Services Licence, and are bound by the Insurance Brokers Code of Practice.

Summary

NIBA supports the purpose of the CSLR. A consumer with an unpaid AFCA determination, after every other avenue is exhausted, should be compensated promptly. Consumers are also best served when the scheme is funded by the parts of the financial system connected to the losses, and when levy dollars reach claimants rather than administration.

The consultation paper proposes that insurance product distributors, the sub-sector through which insurance brokers are levied, pay about \$1.444 million under Tier 3. That is about \$100 for each insurance broker. Treasury's connection assessment identifies responsible entities as the only connected sub-sector beyond financial advice. Insurance brokers are included only because Tier 3 is a backstop.

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

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

NIBA makes five recommendations.

1. **Connection, consistently.** NIBA recommends that insurance product distributors be removed from the 2026–27 special levy, and that the connection test apply in all three tiers (questions 1 and 2).
2. **A minimum threshold.** NIBA recommends that a sub-sector with no connection to the losses not be levied where its share is smaller than the cost of collecting it, and that its share go instead to sub-sectors more closely connected to the losses (question 3).
3. **Review the scheme's costs and funding model.** NIBA recommends an independent review of the CSLR's administration costs before unconnected sub-sectors are asked to contribute, and a review of the funding model after the waterfall's first two levy periods.
4. **Recover before you levy.** NIBA recommends that the expanded recovery powers reach professional indemnity insurers, including those of gatekeepers such as auditors, and that the professional indemnity reforms proceed.
5. **Forward estimates.** NIBA recommends that Treasury publish forward estimates of each sub-sector's Tier 3 exposure (question 4).

1. Apply the connection test in every tier (questions 1 and 2)

NIBA supports Treasury's definition of connection: a product, service or regulated activity that "formed a substantive part of the pathway to consumer loss" (paragraph 11).

Applying that test to the five loss events in the CSLR operator's revised estimate, Treasury finds one connected sub-sector beyond financial advice: responsible entities of managed investment schemes (Table 1). Insurance distribution is connected to none of them.

Tier 3 then levies insurance brokers anyway, by ASIC regulatory effort rather than connection. The clients of the broking profession help fund a scheme they generally cannot use. The CSLR covers personal financial advice, credit and securities dealing, so a household or small business with an unpaid determination against its insurance broker has no claim on it.

NIBA notes that it is not aware of any case in which a broker's client has been left uncompensated because the broker's professional indemnity insurance did not respond. NIBA has argued the principle consistently. In August 2025 it submitted that "Fairness requires that the costs of the CSLR are borne by those sectors whose conduct has given rise to unpaid determinations, rather than by professions with no connection to the underlying problem." In May 2026 it asked that the connection principle inform Tier 3 as well as Tiers 1 and 2.

On repeatability (question 2b), a test applied in Tiers 1 and 2 but set aside in Tier 3 cannot give consistent results from year to year. An unconnected sub-sector's levy would depend on the size of the shortfall, not on any link to it.

On question 2a, NIBA asks Treasury to set out how it assessed the superannuation trustees sub-sector. Superannuation is the common thread in these losses. The Government's 19 August announcement described how harm can be "amplified as consumers move between lead generators, advisers, trustees, investment products and compensation arrangements". The Shield and First Guardian collapses affected "around \$1 billion in retirement savings", and Brite Advisors ran an investment platform for self-managed superannuation funds and overseas pension schemes. Paragraph 11 includes "material involvement in creating, distributing, acquiring or continuing the harmful product or arrangement". NIBA makes no finding about any entity. A sub-sector with that degree of involvement does, however, sit closer to the losses than one with none, and the assessment should show where it drew that line.

NIBA also asks Treasury to publish its assessment of every sub-sector it considered, including those through which consumers held, acquired or borrowed to buy the failed products. Some traded on market: ASIC has described Dixon Advisory's US Masters Residential Property Fund as an ASX-listed property fund. NIBA called for platform accountability in its May 2026 submission.

NIBA recommends that insurance product distributors be removed from the 2026–27 special levy, and that Tier 3 reach only sub-sectors with a demonstrable pathway to the losses, or be used only once Tiers 1 and 2 and all recoveries are exhausted.

2. Set a minimum threshold (question 3)

NIBA's concern under question 3 is not concentration within a sub-sector but the cost of levying one at all.

The insurance product distributors' share is 1.2 per cent of Tier 3 and 0.85 per cent of the \$170.3 million special levy. Removing it would not affect the scheme's ability to raise the money.

Collecting it is not free. ASIC must issue and pursue small invoices across the sub-sector's licensees, and the CSLR operator's estimate allows \$300,000 for ASIC to collect a special levy. Licensees then process the invoices and, as the consultation paper notes, are "accustomed to passing the cost of levies onto other parties" (paragraph 28). For the broking profession, that cost ends up in clients' premiums.

Tier 3 spreads the levy widely so that no small group of sub-sectors carries too much of it. A threshold does not undermine that. The ten sub-sectors with Tier 3 shares under \$2 million carry \$7.9 million between them (Table 2). If the superannuation trustees sub-sector were assessed as connected and levied at the Tier 2 cap, it would contribute about \$16.2 million more. Where a sub-sector's share costs more to collect than it is worth, and others are more closely connected and would feel the levy less, it makes sense to reconsider which sub-sectors are asked to pay.

NIBA recommends a minimum threshold: a sub-sector with no connection to the losses should not be levied where its share is below a set percentage of Tier 3, or where its per-

entity levy is below the likely cost of collection. That share can be absorbed within Tier 3, carried to the next levy period, or allocated to more closely connected sub-sectors for which the levy would have less financial impact.

3. Review the scheme's administration costs first

The CSLR operator's revised estimate for FY2027 shows how much of each levy goes on costs other than compensation (Table 1.1):

Sub-sector	Compensation	AFCA fees, operating and ASIC costs
Credit provision	\$0.18m	\$2.09m
Personal financial advice	\$168.9m	\$25.4m
Whole scheme	\$172.1m	\$31.1m

Across the scheme, administration costs of \$31.1 million are more than the combined 2026–27 annual levies on the four CSLR sub-sectors, of about \$30.7 million (Table 2). The largest single item is \$22.9 million in AFCA fees. Every dollar spent administering the scheme is a dollar that does not reach a consumer, and under Tier 3 it is a dollar that unconnected sub-sectors are asked to fund.

NIBA recommends that, before the special levy is extended to sub-sectors with no connection to the losses, the Government commission an independent review of the CSLR's administration costs, including AFCA fees, the allocation of operating costs and ASIC collection costs, and that each levy estimate report administration separately from compensation.

4. Recover before you levy, and review the funding model

NIBA welcomes the Government's 19 August commitment to expand the CSLR operator's recovery powers. Every dollar recovered from a failed firm, its professional indemnity insurer or its corporate group is a dollar that compliant businesses and their clients do not pay.

Recovery should also reach gatekeepers whose failures contributed to the losses. ASIC has commenced Federal Court proceedings against the auditors of the First Guardian Master Fund, alleging that unqualified audit reports for the 2020 to 2024 financial years were false or misleading. Where such failures are established, the CSLR operator should be able to recover from those parties and their insurers before compliant sub-sectors are levied.

NIBA recommends that the Government confirm the expanded recovery powers reach professional indemnity insurers, including those of gatekeepers such as auditors, and

progress the professional indemnity reforms NIBA supported in February 2026 (no blanket insolvency exclusions, and a right for the CSLR operator to claim under the policy), so that the special levy is a genuine last resort.

These losses ran through several parts of the system: advisers, trustees, responsible entities and, on ASIC's allegations, auditors. A funding model built on four annual-levy sub-sectors and a residual pool was not designed for losses with that many contributors. When the scheme was being designed in 2020, NIBA proposed a legislated triennial review, modelled on Treasury's review of the Terrorism Insurance Scheme.

NIBA recommends that the CSLR funding model be reviewed after the waterfall's first two levy periods, beginning with the independent review of administration costs in section 3.

5. Viability and forward estimates (question 4)

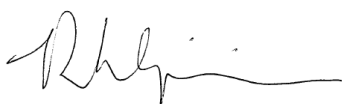
NIBA does not claim that \$1.444 million threatens the viability of the broking profession. Viability is the wrong test for an unconnected sub-sector; the right questions are connection and proportionality. Paragraph 29 sets the bar for reducing a sub-sector's share at evidence of "significant viability risks", a bar that should not apply where there is no connection.

The concern is the trend. The scheme's costs "have exceeded early expectations and placed material pressure on the scheme's funding settings" (paragraph 2). The CSLR operator's revised estimate of the scheme's annual cost rose from \$75.7 million for 2025–26 to \$198.1 million for 2026–27, and Tier 3 allows up to \$30 million per sub-sector each year. For unconnected sub-sectors, the exposure is open-ended in practice.

NIBA recommends that Treasury publish forward estimates of each sub-sector's Tier 3 exposure, so that sub-sectors with no connection to the losses can see what they are being asked to carry.

NIBA supports the CSLR and the move to a rules-based waterfall. Our submission is that the waterfall apply its own connection test consistently, in Tier 3 as in Tiers 1 and 2. NIBA would be pleased to discuss this submission with Treasury officials. Please contact Ben Marshan, Policy and Advocacy, at bmarshan@niba.com.au.

Yours sincerely,



Richard Klipin
Chief Executive Officer
National Insurance Brokers Association

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

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