

10 March 2025

Ms Lauren Hogan
a/g Assistant Secretary
Regulators and Capital Markets Branch
Treasury

Via email: CSLRreview@treasury.gov.au

Dear Ms Hogan

Compensation Scheme of Last Resort post-implementation review

COBA thanks Treasury for the opportunity to provide feedback on its post-implementation review of the Compensation Scheme of Last Resort (CSLR).

COBA is the industry association for Australia's customer owned banks (mutual banks and credit unions). Collectively, our sector has over \$182 billion in assets and is the fifth largest holder of household deposits. Our members range in size from less than \$200 million in assets to around \$25 billion in assets – all significantly smaller than their ASX-listed peers. Customer-owned banks account for around two thirds of the total number of domestic Authorised Deposit-taking Institutions (ADIs) and deliver competition and market leading levels of customer satisfaction in the retail banking market.

Key points

COBA supports the purpose of the CSLR to provide 'last resort' compensation to individuals who have unpaid AFCA determinations.

COBA remains concerned with CSLR's longer-term sustainability given current funding demands increase the risk of our members being levied to cover the unpaid claims of other unrelated subsectors.

Grouping ADI credit providers with non-ADI credit providers

COBA supports the CSLR as a means to compensate individuals with unpaid AFCA determinations. However, COBA has consistently questioned including ADI credit providers in the CSLR alongside non-ADI credit providers. Our members, as ADIs, are subject to prudential regulation, supervision and capital requirements to protect against insolvency. This greatly reduces the likelihood of unpaid AFCA determinations due to insolvency.

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Treasury's 2019 Discussion Paper recognised there is no evidence of unpaid determinations in Australia's banking sector:

*"Over recent years, there is no evidence of unpaid determinations in Australia relating to the provision of prudentially regulated banking, insurance and superannuation services to consumers and small businesses."*¹

While we understand that the CSLR deliberately carves out prudentially regulated activities (e.g. deposit taking) from sectors where not all participants are prudentially regulated (e.g. the provision of credit), there is no evidence to demonstrate that ADI credit providers are causing the same harm as non-ADI credit providers.

Capturing ADI credit providers (i.e. banks) with non-ADI lenders creates unfair outcomes, by requiring ADI credit providers, who are meeting their obligations under AFCA, to cover the costs of non-ADI credit providers who have not paid AFCA determinations against them (and vice versa).

The risk of unpaid AFCA determinations is significantly lower for ADIs than for non-ADI credit providers, as these entities are not subject to prudential capital requirements.

Including ADI credit providers with non-ADIs creates unfair outcomes as our members are required to cover the cost of non-ADI credit providers that have unpaid AFCA determinations against them.

Longer-term scheme sustainability

COBA is concerned with the CSLR's longer-term sustainability given our continued expectation of significant unpaid AFCA determinations in the financial advice subsector.

An unsustainable and inefficient model will lead to excessive costs on the levied subsector, who are paying for the misconduct of insolvent competitors. It will also lead to the risk of special levies on other subsectors such as customer-owned banks (ADI credit providers) who have no connection whatsoever to the insolvent firm.

We believe that these concerns have been substantiated through the CSLR's levy estimate for financial year 2025-26² where it proposed the following levies:

- Financial advice: \$70.11 million.
- Credit provision: \$2.799 million.
- Credit intermediation: \$2.723 million.
- Securities dealing: \$2.343 million.

The \$70.11 million expected to be raised on financial advisors is well above the \$20 million subsector cap and will require raising a special levy. A significant driver of this levy is the retrospective inclusion of Dixon Advisory-related claims.

Additional factors driving the higher estimated levies include AFCA determination decisions and the CSLR operator administration decisions. Targeted scheme changes to improve efficiency and reflect the 'last resort' nature are likely to improve the scheme's long-term sustainability. Some possible changes that could be made include:

- Improving transparency in what constitutes CSLR administration costs, including any charges being imposed by AFCA on the CSLR operator.
- Limiting compensation to victims of capital losses but not for unrealised hypothetical capital gains.

¹ https://treasury.gov.au/sites/default/files/2019-12/191220_cslr_discussion_paper.pdf.

² <https://cslr.org.au/for-industry/fy26-levy-period-3-estimate>.

- Lowering the cap on CSLR payments from the current \$150,000.
- Whether the scheme should not be applied retrospectively to include Dixon Advisory claims and whether the Commonwealth should provide further injections of funding to cover those losses.

We remain concerned with the risk that subsectors, such as the credit provider subsector, particularly ADI credit providers, being required to pay for the unpaid claims of other subsectors, such as financial advisors.

COBA believes that it would be unfair to require other subsectors who meet their AFCA obligations to be levied to cover the failures of other subsectors. We would strongly oppose any move to cross-subsidisation that would shift these levy costs onto our members and away from responsible subsectors.

We thank Treasury for taking our views into account. Please do not hesitate to contact Robert Thomas, Senior Manager Policy (rthomas@coba.asn.au) if you have any questions about our submission.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Michael Lawrence', is positioned above the printed name.

MICHAEL LAWRENCE
Chief Executive Officer