FEBRUARY 2025

REVIEW OF THE COMPENSATION SCHEME OF LAST RESORT
Submission to Treasury

Contents

57 Carrington Road Marrickville NSW 2204

Phone 02 9577 3333 | Email campaigns@choice.com.au | www.choice.com.au

The Australian Consumers' Association is a not-for-profit company limited by guarantee. ABN 72 000 281 925 ACN 000 281 925

SUMMARY

Thank you for the opportunity to provide input toward the review of the compensation scheme of last resort (**CSLR**). This is a joint submission made on behalf of:

- CHOICE
- Consumer Credit Legal Service
- Financial Rights Legal Centre
- Super Consumers
- Consumer Action Law Centre
- Financial Counselling Australia.

The CSLR plays a vital role in Australia's financial services dispute resolution framework. If a financial firm is not willing or not able to pay compensation awarded to someone by the Australian Financial Complaints Authority (**AFCA**), this is often a sign that something has gone substantially wrong for its clients. The CSLR prevents people in these situations from being fully left in the lurch when they suffer loss due to professional misconduct.

Despite operating for less than 12 months, the CSLR has already paid out life-changing amounts of compensation to some applicants whose disputes have been in limbo for months or even years. It is not an easy or short pathway to become eligible for CSLR compensation - applicants must have strong evidence of misconduct in connection with a narrow scope of licensed products and services, and persevere undeterred in the face of successive failures by the financial service provider over time. Our submission contains examples of cases where the CSLR has provided a lifeline to people left in difficult financial situations by professional misconduct.

Establishing the CSLR was a key recommendation of the Review of the financial system external dispute resolution and complaints framework,[1] led by Prof. Ian Ramsay (**Ramsay Review**). The recommendation was endorsed in the Final Report of the Financial Services Royal Commission.[2] These were recommendations accepted and enacted by governments from both sides of politics and supported by a wide range of industry stakeholders. There has been widespread recognition of the need for the CSLR.

The role of the CSLR is novel and there may be opportunities to fine tune its operation to manage any teething issues or unexpected challenges. However, the years of evidence of its need should not be forgotten. The CSLR must continue to play a key role in delivering justice to consumers who have suffered a loss due to the misconduct of financial service providers, thereby restoring and maintaining confidence in the industry. If successful in its objectives, the need for the CSLR should subside over time.

[1] Ramsay, I.; Abramson, J.; Kirkland, A., 'Review of the financial system external dispute resolution and complaints framework', 6 September 2017, *Treasury*, released 21 December 2017
[2] Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Final Report, Volume 1, 1 February 2019

RECOMMENDATIONS

1. The Government should reaffirm the important role the CSLR plays in helping deliver justice to people who have suffered loss due to misconduct and endorse the CSLR's continued role in Australia's financial services dispute resolution framework.
2. The review should have regard to the analysis and conclusions from the Ramsay Review and the Financial Services Royal Commission that demonstrated the need for the CSLR.
3. The Government should consider all options to expand the ability of the CSLR to recover compensation paid in cases relating to medium or large companies from those responsible for the misconduct, including from related companies.
4. The review should consider ways to clarify and streamline the roles of AFCA and the CSLR, including the responsibility for making decisions on CSLR eligibility, administrative matters and processes to appeal or seek review of decisions on CSLR eligibility.
5. Establish a definition of 'reasonable payment plan' under *s1064(2)(c) Corporations Act* so that unjustified long term payment plans cannot be used to delay compensation payouts via the CSLR, or so that the CSLR can award interest or further compensation, when appropriate.
6. The Government should consider alternatives ways the CSLR can provide consumers with compensation when a recalcitrant business is still operating or in voluntary liquidation but is delaying or avoiding paying an amount awarded by an AFCA determination.
7. The scope of the CSLR should be revised so that it provides coverage for all financial products and in particular, is available to any victims of financial misconduct who have been misled as to the nature of their investment.
8. The review should consider whether the scope of the definitions of financial product and retail client are not unreasonably limiting eligibility of the scope of the CSLR.
9. Increase the cap on compensation payable by the CSLR, so that it is in line with the AFCA compensation cap.

Delivering on the objectives of the CSLR

For some individuals, the CSLR has already provided a vital pathway to receiving life-changing compensation for misconduct by financial services providers. Some of these people had been going through dispute resolution processes for years and despite recognition of the legitimacy of their case, had not received compensation. In this sense, the CSLR is helping to both:

- support and restore confidence in the financial systems' external dispute resolution (**EDR**) framework; and
- provide compensation to eligible victims of financial services misconduct.

Examples of life-changing compensation payouts by the CSLR

Financial Rights Legal Centre case study - April - S291663
April, a single parent with dependent children who was entirely reliant on Centrelink was guarantor for her ex's loan with a non-bank lender. April instructed us the relationship with her ex was characterised by family and domestic violence. Once April's ex stopped making payments, the non-bank lender debited April's account and she ended up paying the full loan amount. April, with the assistance of Financial Rights from 2020, initially engaged with the creditor directly and then lodged in AFCA on the basis the lender had engaged in unjust conduct and breached the responsible lending obligations of the National Consumer Credit Protection Act.

A recommendation was received in her favour in December 2022 but as the non-bank lender did not comply with the recommendation the matter needed to proceed to determination in September 2023 (see AFCA Determination 834699). The non-bank lender advised AFCA they did not have the funds to pay the determination. The lender was penalised by the Federal Court of Australia in 2023 after legal action was taken by ASIC for their conduct involving a number of serious breaches of the NCCP Act, though consumers were not entitled to compensation from that action. With our assistance, April lodged in the CSLR. Her application was accepted, and she received an offer of the full determination amount of about $10,000.

April's story demonstrates the importance of the CSLR in cases where significant misconduct has occurred - in this case the offending financial service provider was subject to enforcement action at the same time that she was seeking compensation. These are precisely the situations where victims should be guaranteed to see the benefits of the EDR scheme. Enforcement action is normally focused on penalties and rarely leads to compensation being paid out to victims of the relevant misconduct.

Financial Rights Legal Centre case study - Eve - S291662
In 2021 Eve, a single mother with 4 dependents reliant on Centrelink, approached us for assistance with a car loan she was coerced into obtaining by her abusive ex-husband some

years earlier, including one with a small Car Loan Lender for about $13,000. When she had come to Financial Rights she had already repaid over $30,000.

With assistance from Financial Rights, Eve raised a dispute with the small Car Loan Lender that the loan was unaffordable and the lender had breached the responsible lending obligations of the National Consumer Credit Protection Act 2009 and sought a refund of the amount Eve had paid above the benefit of the loan. The small Car Loan Lender rejected Eve's dispute so we lodged a complaint in AFCA in 2022. After a couple of months, the small Car Loan Lender advised AFCA that it was insolvent and unable to engage in the dispute resolution process. AFCA progressed the complaint.

Eve received a final determination from AFCA in her favour in early 2023 (see AFCA Determination 860015) that found the lender had breached its legal obligations and Eva was entitled to:

- *a refund of interest, fees and charge above the benefit she had received;*
- *be refunded the principal amount (approximately $18,000); and*
- *around $5000 compensation non-financial loss.*

The determination went unpaid. In mid-2024 with Financial Rights' assistance, Eve made an application to the CSLR and in the second half of 2024 her claim was accepted and she received the amount awarded in the AFCA determination in her favour.

Eve and April's cases are also two examples where people in particularly difficult financial situations have benefited greatly from the operations of the CSLR.

Consumer Credit Legal Service case study - the Huntleys AFCA/CSLR ref 12-00-936084

In around 2016, Mr and Mrs Huntley (name changed) were approaching retirement and considering their future housing options. They heard about a new form of retirement living, known as a Sterling New Life "lease-for-life".

They agreed to purchase a 40-year lease for approximately $250,000. This should have meant that they wouldn't need to pay rent in the future and would have security of housing for the rest of their lives.

The Huntleys intended to sell their home to fund the purchase of the lease and have a little left over to take some holidays and enjoy their retirement. When it came time to pay for the lease, their house sold for less than they had hoped, meaning they did not have enough funds to pay upfront for the lease. They paid what they could upfront and entered a payment plan to pay off the balance of the purchase price.

They moved into their new home in 2017. With the knowledge that they would be there for the rest of their lives, they made more than $10,000 of improvements to the home. In 2019, the scheme behind Sterling New Life collapsed, and the Huntleys were forced to move out of their home.

It turned out, what the Huntleys thought was a safe and secure "trust fund", was what AFCA described as 'a high-risk investment'. The distributions from the initial investment were supposed to pay the Huntleys' rent for 40 years, but when the scheme failed, the rent stopped being paid. The landlord of the property consequently evicted the Huntleys, and they never received their initial investment back.

While the Huntleys have been fortunate to have the means and family support to find stable housing, the retirement they are now facing is a far cry from their expectation of 40 years of no rent. Other victims of the Sterling collapse have not been so lucky, with some being forced to live in caravans, or to couch surf well into their 70s and 80s.

Due to the complexity of Sterling scheme and how regulation of the scheme spanned across both state and Commonwealth jurisdictions, the Huntleys and other Sterling victims have spent many years fighting for justice and compensation for the money they lost and the trauma they have suffered.

The Huntleys had a potential cause of action against Libertas Financial Planning Pty Ltd, the licencee of Sterling from late 2017 until its collapse. In April 2023, CCLS began managing the Huntleys' existing AFCA complaint. At that time, Libertas was an operating business.

Subsequently, in May 2023, Libertas entered a members' voluntarily liquidation, with parent Sequoia Financial Group Ltd stating that it "decided to transfer the operations and customers of Libertas Financial Planning Pty Ltd to Interprac Financial Planning Pty Ltd and Sequoia Wealth Management Pty Ltd, to achieve operational and cost synergies."

With Libertas in liquidation, the Huntleys were unlikely to be paid any compensation awarded by AFCA. One beacon of hope was the promise of a financial services compensation scheme of last resort, which would allow people who have suffered a loss through misconduct of a financial firm which either could not, or would not, pay compensation, to receive some redress.

When the CSLR was passed into law in 2023, many victims of the Sterling collapse had their hopes crushed, as the newly enacted legislation specifically excluded managed investment schemes. As a result, the Huntleys' AFCA complaint was closed on the basis that there was no likely possibility of compensation being paid, either by Libertas, or through the CSLR.

Upon further review of the CSLR scope and the Huntleys' complaint, CCLS argued that Libertas, through its authorised representatives, provided the Huntleys with personal financial product

advice, which was inappropriate for them in their circumstances. AFCA subsequently made a determination in favour of the Huntleys and awarded them over $200,000 in compensation. The Huntleys were then able to lodge an application to the CSLR and they were awarded the statutory maximum of $150,000.

This outcome had an overwhelmingly positive impact of the Huntleys' quality of life, allowing to them to live the retirement they had hoped and to put the trauma of the Sterling collapse behind them.

> *"Words cannot describe how this CSLR payment has affected our lives going forward in a very positive way. Financially, this payment has allowed us to look at a more enjoyable retirement without the loss of our money hanging over us. Emotionally, words cannot describe how getting recognition and compensation from the CSLR has de-stressed us both. Our families are so relieved as well and their concerns about us, and our financial future, have now dissipated."*

This resolution, while positive, took over five years following the collapse the Sterling scheme to be achieved, and was only possible because of the Commonwealth Government's commitment to ensuring that consumers affected by illegal or inappropriate conduct in the financial services sector have access to redress, even where the perpetrator of the conduct is unable or unwilling to pay compensation.

The Sterling First collapse is also referred to later regarding the scope of the CSLR.

Recommendation 1

The Government should reaffirm the important role the CSLR plays in helping deliver justice to people who have suffered loss due to misconduct and endorse the CSLR's continued role in Australia's financial services dispute resolution framework.

The need for the CSLR has been recognised for years

In conducting its review, Treasury should recognise the comprehensive analysis that led to the establishment of the CSLR, the long history of problems in the financial services sector that justified its establishment and the history of support for the scheme.

The need for a CSLR was the key recommendation of the Supplementary Final Report of the Ramsay Review.[3] The Ramsay Review was the last comprehensive independent analysis of EDR in financial services. The review received significant input from all stakeholders in financial services and came to a clear conclusion that a CSLR should be established.[4]

[3] Ramsay, I.; Abramson, J.; Kirkland, A., above n 1, recommendation 1
[4] Ibid, page 51

The Ramsay Review's recommendation to establish a CSLR was then endorsed by Commissioner Hayne in the Financial Services Royal Commission's Final Report.[5] In 2019, this recommendation was accepted by the previous government,[6] and then the CSLR was eventually legislated by the current government.[7]

Extensive consideration by a range of independent specialists led to the establishment of the CSLR. While there may be opportunities to improve the regime, the extremely clear message over a number of years that there is a clear need for the CSLR should not be forgotten.

Recommendation 2
The review should have regard to the comprehensive analysis and conclusions from the Ramsay Review and the Financial Services Royal Commission that demonstrated the need for the CSLR.

The CSLR funding model

We generally support the continued funding of the CSLR via industry levy. In general, doing so is likely to have a positive impact on industry by providing an incentive for financial firms to do the right thing, and to clean up the industry by removing rogue operators. Further, in most situations the levy is not likely to represent an unsustainable cost to industry members - just as the annual levy this year appears to be for credit providers, credit intermediaries and securities dealers.[8]

However, we recognise that a significant factor causing the review of the CSLR is the estimated $70mil cost of the 2025-26 levy to address claims relating to personal advice. As 92% of the entire 25/26 levy estimate figure stems from two failed firms,[9] a review of the CSLR's funding sustainability should closely consider the situations of these firms and how the financial burden of any future collapses could be handled differently.

For example, the Government should consider whether the CSLR should have an expanded power to recover compensation payments from medium or large related companies. We encourage the review to interrogate the extent to which related parties or directors of the two recent significant failures could or should have been required to pay compensation. Large

---

[5] Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Final Report, Volume 1, 1 February 2019, recommendation 7.1
[6] Government Response to the Final Report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, "Restoring trust in Australia's financial system, February 2019, *Treasury,* page 36
[7] See, for example, https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r6985
[8] https://asic.gov.au/about-asic/dealing-with-asic/compensation-scheme-of-last-resort/, accessed 18 February 2025
[9] CSLR, "Compensation Scheme of Last Resort releases FY26 initial levy estimate", 31 January 2025, https://cslr.org.au/news/compensation-scheme-last-resort-releases-fy26-initial-levy-estimate

companies or companies with complex corporate structures should not be able to avoid legal responsibility for misconduct of authorised representatives, wholly owned subsidiaries or a related entity.

The review should also consider whether the levy could be made more sustainable by including managed investment schemes, which would expand the levy base and may help reduce the opportunities for complex structures being used to avoid liability for misconduct. This is discussed further below regarding the scope of the CSLR.

Recommendation 3

The Government should consider all options to expand the ability of the CSLR to recover compensation paid in cases relating to medium or large companies from those responsible for the misconduct, including from related companies.

Other relevant factors

The review should also consider the following factors when reviewing the funding model for the CSLR:

- each claim made to the CSLR represents loss felt by an individual. These people should not be denied compensation if they have been found to be the victims of misconduct;
- there had been recent significant collapses in the financial advice sector prior to the Ramsay Review, and it still recommended an industry funded model while recognising the impact it would have on industry and all the concerns being raised today;[10]
- if the impact of the levy is deemed too great on smaller players in the industry, the government should look at alternative methods for funding the levy, as it did with the pre-CSLR levy. Reducing the scope of eligibility for victims of poor advice constituting misconduct should be a last resort;
- the CSLR should be more empowered and provided more flexibility with respect to payments when pursuing those entities still trading in order to lower the cost burden on other contributors to the scheme: see further discussion below.

Scheme delivery and CSLR powers

AFCA/CSLR relationship

The review should consider opportunities to clarify and streamline the relationship between AFCA and the CSLR, and the complainant pathway.

For community lawyers helping claimants navigate AFCA and the CSLR, at times it has been unclear which body would make the decision about whether a complaint fell within the scope of the CSLR. In some cases involving a collapsed financial firm, it has appeared AFCA was

[10] Ramsay, I.; Abramson, J.; Kirkland, A., above n 1, p 23-34

effectively making this decision by only progressing cases it expected to be eligible for the CSLR.

There are also aspects of the process between AFCA and the CSLR that are somewhat unnecessary duplicated, causing further delay. For example, in some cases the CSLR has indicated that it was waiting for the financial firm to confirm whether applicants were former customers of the financial firm. This information should be apparent from appropriate steps notice and the AFCA determination.

Decisions on eligibility

It is also not clear what review rights complainants owed compensation under an AFCA determination have if they are deemed ineligible for payment by the CSLR. When a CSLR application is refused, the messaging to the complainant about the decision and any options they have is unclear, and should be improved. There is also no clear escalation pathway for this situation or any other complaints about the CSLR. We understand this may require court action, which is not a viable option for many complainants, and can be an unfair outcome after a long EDR process designed to avoid the need for court proceedings.

Recommendation 4
The review should consider ways to clarify and streamline the roles of AFCA and the CSLR, including the responsibility for making decisions on CSLR eligibility, administrative matters and processes to appeal or seek review of decisions on CSLR eligiblity.

The extent of CSLR's powers

Derek's story from Financial Rights Legal Centre helps demonstrate some of the challenges with limits to the current scope of the CSLR's powers.

Financial Rights Legal Centre case study - Derek's story - AFCA determination 621637

*Derek was a serving member of the Australian Armed forces. In **2010**, Derek and his wife purchased an off the plan unit from a property company Parktrent Property Group to use as an investment property. He purchased the unit after attending a high-pressure sales event.*

*In or around **November 2012**, Derek became concerned that he may not be able to afford the unit and communicated this to Parktrent Property Group**.** He was advised by them that if he couldn't settle, he would lose the deposit. However, if he did settle, he could later sell the property.*

Parktrent Property Group then referred Derek to the financial firm EasyPlan Financial Services - the brokering service run by Parktrent - to assist him to obtain a loan to complete the purchase of the property. The broker assisted the complainant to obtain a $500,000 loan from the bank.

Derek was making the repayments under financial strain, and was forced to sell the property in ***March 2018****, but whlist he managed to sell without any shortfall he incurred significant personal losses.*

During this time Derek was medically discharged from the Armed forces after being injured on an overseas posting. The consequences of the ongoing dispute have compounded his emotional and financial well-being.

With Financial Rights assistance, Derek made a complaint in ***2019*** *against EasyPlan* ***Financial Services*** *claiming:*

- *the broker and the property company are related entities and the broker acted as an agent for the property company*
- *the property company made misleading representations about the likely future investment performance of the property*
- *the property company and the broker used high pressure sales tactics to persuade him to purchase the property*
- *the loan was unsuitable because it did not meet his requirements and objectives and he could not afford to make the required repayments without substantial hardship*
- *the broker completed the loan application and the complainant was never provided a copy of the complete application before the broker submitted the application to the bank*
- *some information about his financial situation on the application form was inaccurate, and the broker knew or ought to have known that information was inaccurate*
- *the broker never informed him that his brother in-law and his wife were included as co-borrowers on the application and he did not agree to this arrangement, and*
- *the broker did not inform him that lenders mortgage insurance was required as a condition of the loan and this caused him additional financial hardship.*

In ***March 2022*** *after years of submissions being exchanged and each party having reasonable attempts to resolve the matter AFCA (AFCA determination 621637) found that EasyPlan had breached its responsible lending obligations and engaged in unfair and dishonest, and*

misleading and deceptive, conduct. AFCA ruled that EasyPlan should compensate the complainant for the financial and non-financial loss this misconduct caused him, comprising:

- *$92,600 compensation for net financial loss the unsuitable loan and the broker's misconduct caused, and*
- *$4,000 compensation for non-financial loss.*

*Notably no interest was awarded. The AFCA Determination required full payment of the $96,600 on or before **1 April 2022**.*

EasyPlan failed to meet the due date for payment and ignored all correspondence from Financial Rights for several months.

*In **July 2022** EasyPlan offered a repayment arrangement but made no payment.*

*In **October 2022** EasyPlan offered to commence paying $2,000 per week where they stated they would make it for 4 weeks and then look to increase after that. They then stopped paying in **November 2022** after paying $8,000.*

EasyPlan did not comply with the terms of its own offer. It subsequently made sporadic repayments ranging from $1,000 to $2,000 totalling $6,000 in 2023 and $1,000 in 2024.

In total EasyPlan paid $15,000 over a period in which it should have, under the terms of its offer, have already repaid the full $96,000.

Further, these payments were only made in response to contact from AFCA in 2022 and when a further dispute was lodged for non-payment in March 2023, or contact with AFCA in relation to the final steps notice in March 2024.

EasyPlan consistently ignored Derek and Financial Rights' requests for payments when they were missed or sought to be followed up.

*In **April 2024** Derek lodged in the CSLR. As at the date of lodging $77,600 remained owing to him. Derek waited several months.*

After the CSLR contacted EasyPlan they began making unilateral payments of $1,000 per week. At that rate though, it will take nearly 78 weeks to repay Derek or 18 months, meaning Derek will not be compensated in full until January 2027 - 15 years since the impugned conduct and 5 years from the determination.

The CSLR directed Financial Rights to continue to "negotiate" with EasyPlan as they monitored the situation. The repayment arrangement has been breached unilaterally on at least one occasion. Our correspondence has largely been ignored by EasyPlan and has been for months.

The CSLR also directed Derek and Financial Rights back to AFCA. However, AFCA have no jurisdiction to adjudicate this issue. They can only notify regulators that the determination is unpaid.

There are three key insights that arise out of Derek's story:

- the nature of "reasonable payment plans" needs to be clarified or strengthened;
- consideration needs to be given to providing CSLR with further powers to award interest or other compensation payments in the face of recalcitrant debtors; and
- CSLR needs to be further empowered to enforce decisions.

The nature of "reasonable payment plans" needs to be clarified or strengthened

Under Part 7.10B of the *Corporations Act 2001* the CSLR *must* make an offer of compensation where the eligibility criteria have been met.[11]

Despite Derek meeting the eligibility criteria,[12] the CSLR has not made an offer of compensation on the basis that EasyPlan is making repayments under a "reasonable payment plan" – a requirement under the ''appropriate steps" section of the Act.[13]

However, this "repayment plan" was made unilaterally and not been made in consultation with Derek nor Financial Rights, his representative. Looking at the matter as a whole, it is not in truth an 18-month repayment plan, but a four-and a half-year repayment plan with a to-date delinquent payer. This is plainly unreasonable. It provides Derek no certainty for him or his family.

If the CSLR upheld a $1,000 per week agreement, EasyPlan is obtaining the benefit of an interest free loan at Derek's expense. This would be unfair.

If this was a NSW court judgment, EasyPlan would need to prove they could not pay more through an "Application to pay by instalment" process and would be subject to a default rate of interest. Instead, EasyPlan is unfairly being given an advantage by having a one-sided repayment arrangement indulged. Further, the arrangement places the burden on Derek to

[11] *Corporations Act 2001,* s 1068
[12] Ibid, s 1064(1)
[13] Ibid, s 1064(2)(c)

constantly monitor and follow up the (to date largely unresponsive) debtor and will likely necessitate further contact with and action by the CLSR in monitoring adherence.

Clarification is required to what is meant by "reasonable payment plan" under s 1064(2)(c) of the *Corporations Act*, to ensure that plans unilaterally established by a debtor and not agreed to by a debtee cannot be deemed reasonable.

Interest payments

As AFCA decisions are made independently of the CSLR, the CSLR cannot assess the merits of the AFCA determination or award compensation. Further, the amount of compensation payable to the person must be an amount equal to the AFCA determination minus any amounts already paid to the person, etc. The CSLR has no discretion to include any additional amounts not specified in the relevant AFCA determination, such as interest payments.

In Derek's case, AFCA did not award any interest and thus CLSR cannot award any interest in a case that has a debtor unilaterally deciding to stretch out payments for close to 5 years. This inability for the CLSR to include additional payments like interest has led to an unfair outcome to Derek who has in effect provided an interest free loan to EasyPlan. AFCA does not have a clear jurisdiction to now award interest.

Consideration needs to be given to providing CLSR with further powers to award interest or other compensation payments in the face of recalcitrant debtors.

Recommendation 5

Establish a definition of 'reasonable payment plan' under s1064(2)(c) Corporations Act so that unjustified long term payment plans cannot be used to delay compensation payouts via the CSLR, or so that the CSLR can award interest or further compensation, when appropriate.

CSLR needs to be further empowered to enforce decisions

The CSLR is currently not empowered to wind-up entities to enforce payment. Instead, they have the right to subrogate[14] and if the CSLR pays the determination it must notify ASIC who then must cancel the license.[15]

We are sympathetic to the argument put by other firms subject to paying for the CSLR that they should not be paying for the debts of financial firms who are still trading. The CSLR should not be providing compensation in these situations and the regime needs more teeth to enforce AFCA determinations against financial firms who are still trading and simply refusing to pay or cooperating in a reasonable manner.

[14] Ibid, s 1069A
[15] Ibid, s 915B

We are also sympathetic that if the CSLR pays Derek, it must notify ASIC who must then cancel the license of EasyPlan. It places a heavy burden on CSLR who would effectively end the operation of the business which will cause issues for their other clients and possibly trigger other claims.

This review should recommend solutions to address this issue. For example:

- A clear ability for the CSLR to step in and pay on behalf of a financial firm, with the firm repaying the CSLR over a specified time. This would require amendments to the legislation with respect to when the CSLR notifies ASIC about a financial firm's failure to pay, and when ASIC must cancel a license.
- New powers to the CSLR allowing it to compel a firm to access its professional indemnity or other relevant insurance cover payment.

Recommendation 6
The Government should consider alternatives ways the CSLR can provide consumers with compensation when a recalcitrant business is still operating or in voluntary liquidation but is delaying or avoiding paying an amount awarded by an AFCA determination.

The current scope of the CSLR

Throughout the development of the CSLR, consumer groups have consistently advocated for it to have broad coverage across financial services. We maintain that this should be the case - victims of misconduct by financial service providers should be able to access compensation that is awarded by AFCA.

The Government should consider how eligibility criteria can be broadened so that consumers can receive compensation when it is awarded by AFCA, regardless of the financial product in question.

A clear example of the problems with the current approach is with the blanket exclusion of managed investment schemes (**MIS**) from the scope of the CSLR. The Ramsay Review found that operators of managed investment schemes were the second highest category of non-compliant financial firms at the Financial Ombudsman Service, and recommended their inclusion in the CSLR.[16] This high rate of non-compliance has continued in the AFCA era as well.[17] Including MIS in the scheme may also help expand the sources of funding for the levy, and reduce the individual burden of the levy on financial advisors.

The logic for excluding MIS altogether from the CSLR is weak. While MIS may sometimes be a high risk investment, this may not be apparent to less financially competent individuals that are

[16] Ramsay, I.; Abramson, J.; Kirkland, A., above n 1, recommendation 2
[17] AFCA, Submission to Treasury's review of the Regulatory Framework for Managed Investment Schemes, October 2023, p 5-6

reliant on financial advisers, particularly when misconduct by the adviser has influenced their decision to invest. While the CSLR was not originally intended to cover reasonably known market risk,[18] this is not a fair description of many cases involving MIS that have devastating financial consequences on the victims of financial misconduct. At a minimum, there should be scope for inclusion of consumers in these situations that fall outside the target market described in the design and distribution obligations for these products.

Consumer Credit Legal Service case study - Mrs Fleming's story

Mrs Fleming heard about a new type of retirement living from her good friend who had entered into a similar "lease for life" some years earlier. Mrs Fleming's friend arranged for her to meet with a representative from Sterling New Life to discuss her housing options as she approached retirement age.

After meeting with the Sterling New Life representative, Mrs Fleming decided to purchase her own "lease for life", to give her security of housing for the rest of her life, and to free up her income for other retirement expenses. She paid approximately $230,000 for a 40-year lease.

The Sterling New Life representative suggested that Mrs Fleming look into withdrawing money from her superannuation to fund the purchase. Mrs Fleming subsequently withdrew the entire balance of her superannuation.

She moved into her new property in late 2017. Unbeknownst to her, her money was placed into a managed investment scheme, with the distributions from that investment intended to cover the rent for the 40 years.

In 2019, the scheme behind Sterling New Life collapsed and Mrs Fleming's rent ceased to be paid. She received multiple notices to vacate the property, including a court order initiated by the landlord.

As with other victims of the Sterling collapse, Mrs Fleming spent many years trying to obtain compensation for the losses she suffered.

Despite Mrs Fleming having a potential cause of action against Libertas Financial Planning Pty Ltd, the licencee of Sterling from August 2017, Libertas went into liquidation in 2023, and as such would not pay any compensation awarded by AFCA. AFCA initially closed Mrs Fleming's complaint on this basis.

The proposed financial services compensation scheme of last resort was a beacon of hope. However, once passed, the legislation specifically excluded managed investment schemes and Mrs Fleming was unable to access the scheme.

[18] Ramsay, I.; Abramson, J.; Kirkland, A., above n 1, p134

Mrs Fleming's involvement with Sterling New Life caused her to lose her entire life's savings, including the money that was meant to support her through retirement. Despite not understanding how her money was going to be treated, nor what a managed investment scheme was, Mrs Fleming is unable to access compensation, despite the alleged misconduct by the Sterling group and its licencee.

The rigidity of the CSLR to exclude claims based on the individual financial product involved, instead of the nature of the investment, stands in the way of access to justice and does little to provide real positive impact where it is needed most.

The Sterling First collapse provides a clear example of this, where elderly Australians were under the impression that they were putting their money into a safe way to secure their long term accommodation. The review should consider our past submissions to various inquiries detailing the impact of the collapse.[19]

Recommendation 7

The scope of the CSLR should be revised so that it provides coverage for all financial products and in particular, is available to any victims of financial misconduct who have been misled as to the nature of their investment.

Review definitions of financial product; retail client

Related to this, the review should also consider whether the definitions of financial product and retail client require updating to ensure that these definitions are not unreasonably excluding people from the scope of the CSLR.

Recommendation 8

The review should consider whether the scope of the definitions of financial product and retail client are not unreasonably limiting eligibility of the scope of the CSLR.

---

[19] Joint consumer submission to Treasury consultation on Compensation Scheme of Last Resort, August 2021, available at: https://www.choice.com.au/consumer-advocacy/policy/policy-submissions/2021/august/joint-consumer-submission-to-treasury-on-the-compensation-scheme-of-last-resort;
CHOICE, submission to Treasury's the review of the regulatory framework for managed investment schemes, September 2023, available at: https://www.choice.com.au/consumer-advocacy/policy/policy-submissions/2023/september/managed-investment-schemes
CHOICE, submission to Senate Economics References Committee inquiry into Sterling Income Trust, November 2021, available at: https://www.choice.com.au/consumer-advocacy/policy/policy-submissions/2021/november/submission-to-senate-economics-references-committee-inquiry-into-sterling-income-trust

CSLR compensation cap should match AFCA cap

We also recommend that the cap on compensation payable by the CSLR is brought into line with the AFCA compensation cap. This was also part of the original recommendation of the Ramsay Review[20] that was also endorsed by Commissioner Hayne.[21]

Recommendation 9

Increase the cap on compensation payable by the CSLR, so that it is in line with the AFCA compensation cap.

[20] Ramsay, I.; Abramson, J.; Kirkland, A., above n 1, recommendation 3

[21] Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Final Report, Volume 1, 1 February 2019, p484-485