

# Compensation Scheme of Last Resort (CSLR): Reform options to support ongoing sustainability – Consultation

## Submission by The Conexus Institute

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David Bell and Geoff Warren

### **About The Conexus Institute**

The Conexus Institute is an independent, not-for-profit research institution focused on improving retirement outcomes for Australian consumers. Philanthropically funded, the Institute is supported by the insights of a high-quality advisory board, who work on a pro-bono basis. The Institute adopts a research-for-impact model and frequently collaborates with researchers from academia, associations, and industry. Where possible research is made open source to assist industry and create transparency and accountability. Further information [here](#).

### **About David Bell**

Dr David Bell is Executive Director of The Conexus Institute. Bell's career has been dedicated to the investment and retirement sector. He has worked with both commercial and profit-for-member firms and ran his own consulting firm. Bell taught for 12 years at Macquarie University and in 2020 completed his PhD at UNSW which focused on retirement investment problems. Full bio [here](#).

### **About Geoff Warren**

Dr Geoff Warren is Research Fellow at The Conexus Institute and an Honorary Associate Professor with the Australian National University. Warren's career has contained distinct industry and academic phases, with investment and superannuation being two particular areas of focus. He has worked with commercial investment firms and government centres, while his academic career has predominantly been at Australian National University. Warren is a member of various advisory boards, including the ASIC Consultative Panel. Full bio [here](#).

**\*\*\* The authors are willing and able to participate in further consultation. Please treat this as a public submission. \*\*\***

# Summary

This submission is set out in two parts. The first part sets out our motivations, which are based on our research and experience of the superannuation system. These motivations help to inform our views, the second part of our submission.

These are some of the key points made in our submission:

1. The review needs to consider yesterday's failings and tomorrow's challenges, of which there are many. We expect the super and advice system to evolve significantly in the future.
2. Catastrophic losses relating to product failures have been the main draw on CSLR funding, but we highlight other claim scenarios. We think it is important to consider these scenarios through the lens of CSLR funding models.
3. We set out arguments for and against including SMSFs in the funding model. If SMSFs are included in the funding model we think it is important that it is limited to only those SMSF members which would be eligible to make a claim (i.e. they received financial advice which contributed to the loss).

## Motivations underpinning our submission

This submission, along with related submissions<sup>1</sup>, are founded on a collection of motivations detailed below that are based on our research and experience. We only briefly outline these motivations, but we are happy to discuss in further detail.

### Motivation #1: Review needs to consider yesterday's failings and tomorrow's challenges

It is important that the review not only acknowledge and address past failings but also focus on the challenges which may lead to future failings.

A number of recent failings have resulted in substantial losses for consumers, large claims on the CSLR, and ultimately have been the catalyst for this series of consultations. These include:

1. Dixon Advisory and the US Masters Residential Property Fund (URF)
2. United Global Capital (UGC) and the Global Capital Property Fund (GCPF)
3. Shield Master Fund and First Guardian Master Fund

A few themes emerge from these episodes:

- Product failings, with sub-standard investments that destroyed value for investors mostly involving private assets.
- Failings in financial advice, with advisers not operating in best interest of their clients.
- Lead generators in the cases of United, Shield and First Guardian.
- Failure of other potential 'gate holders' such as trustees and platforms to effectively address the risks to consumers, most notably in the case of Shield and First Guardian; and,
- Fraud being a factor in some cases, and possibly all episodes to a degree.

These failings reveal a systemic weakness in the mechanisms via which trusting consumers place their faith in key operators which collectively advise and manage their superannuation. The current set of reviews is important to reduce the possibility for these systemic weaknesses to manifest again.

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<sup>1</sup> The related submission is '*Compensation Scheme of Last Resort (CSLR): Reform options to support ongoing sustainability*'.

There is a range of future challenges that may be the source of potential poor consumer outcomes in the future which should also be considered, including:

- **Retirement** – Super fund offerings (including product, guidance and pathways) need to evolve sufficiently to support good member outcomes in retirement. Any policy changes should take care not to inhibit (and indeed support) the capacity of super funds to assist their members in retirement.
- **Potential secular shift in preferences for more control and flexibility** – There are signs of individuals showing more interest in taking control over their own super. A possible evidence point seems to be the emergence of a younger member cohort opening SMSF's with relatively low balances on an unadvised basis<sup>2</sup>. Potential for such a shift could be linked to the rise of populism and distrust of institutions (whereby large superannuation funds are viewed as institutions), increased focus on super in policy, regulatory and media circles, and rising super balances as the system matures. The tax changes announced in the recent budget may also contribute to this trend by establishing super as a remaining bastion for tax-advantaged investment.
- **Constrained number of financial advisers** – This is a well-known situation:
  - *Demand*: The number of people approaching retirement with super balances of reasonable size should increase the demand for financial advice.
  - *Supply*: Adviser numbers have fallen by around 45% from a peak of 29,000 to around 15,000 post the Financial Services Royal Commission. Three shifts are primarily responsible:
    - Mandatory education and exam standards
    - Banning of conflicted remuneration
    - Mass exit of major banks

Demand clearly exceeds supply. While anecdotally the return on equity of advice businesses is very high, the pathway to increased supply is slow and constrained (for various reasons).

How unmet advice demands are serviced remains unclear. Super fund trustees may meet some needs, largely related to interests in the super fund. Digital advice may develop in a way to help address the advice gap. However, in our view, comprehensive digital advice has not developed in a sufficiently 'institutional' (i.e. comprehensive and rigorous) manner, and nor is it clear that consumers will accept a purely digital offer for a comprehensive advice service. More informal sources of guidance may be utilised as a consequence, include AI, social media and input from family and friends.
- **'Democratisation' of private assets** – The past failings listed above have a common thread of private assets. Meanwhile, a trend has been occurring towards greater availability and use of private assets within private wealth channels. It is entirely possible that private markets may grow at a faster rate than public markets in the future, and that the push to provide consumers with access to these markets will continue. This creates a range of challenges relating to operational risk, valuations, transparency, illiquidity and agency risks that can give rise to potential for poor consumer outcomes. We note ASIC's significant review on this topic last year<sup>3</sup>.
- **AI** – There is a risk that the potential role of AI is being underestimated, noting that it can be an enabler of greater control and flexibility for individuals (i.e. the second challenge as listed above). The pace of advancements in AI capability and the ability of users to better utilise AI to assist with areas such as financial advice is stunning. Below are some examples of how prompt design can be used to access AI-generated guidance on a financial advice topic in a way that can circumvent constraints on advice provision imposed by the AI provider:
  - Design an AI agent or a collection of AI agents to debate and discuss the financial questions being explored. Importantly these agents can be designed to take on personas, with prompts

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<sup>2</sup> <https://smcaustralia.com/blogs/new-switching-behaviour-on-low-super-balances/>

<sup>3</sup> <https://www.asic.gov.au/regulatory-resources/markets/public-and-private-markets/>

asking ‘what might a particular person or panel suggest?’. For example, an AI persona of a high-profile operator could be created by reading every piece of information they have published.

- There is nothing stopping parties providing the prompts, for instance via chat rooms or social forums, or running a seminar on how to utilise AI to help manage your finances. It is debatable whether there is anything legally stopping an AI personal consultant from assisting a person to set up a personal AI process by providing the prompts.

It is relevant to consider the nature of the potential losses posed by each of these future challenges, and how they may be impacted by policy changes. We broadly break loss potential into three categories:

- (A) Significant losses experienced by a large portion of the population.
- (B) Catastrophic losses experienced by a (likely) small portion of the population.
- (C) Potential for smaller, non-catastrophic slippage in outcomes experienced by large portion of the population.

It seems that the current set of consultations is most focused on minimising (B). We also think it is important to focus on the potential to reduce (C), as small losses borne by many can have significant economic impacts especially when compounded over many years.

## Motivation #2: Framing of risk to consumer outcomes (for purpose of this consultation)

Risk can be defined in many different ways. For the purposes of this consultation, we define risk as the risk of investment losses. We set this out in the most basic way as possible in the diagram below.

Risk	Nature
1. Market risk	<ul style="list-style-type: none"> <li>• Broad decline in markets</li> <li>• Systematic, i.e. beta</li> <li>• Exposure linked to asset allocation</li> </ul>
2. Relative performance risk	<ul style="list-style-type: none"> <li>• Individual investments perform poorly</li> <li>• Idiosyncratic</li> <li>• Exposure linked to selection of specific investments or managed funds</li> </ul>
3. Operational risk	<ul style="list-style-type: none"> <li>• Investment loss through operational failures, including:               <ul style="list-style-type: none"> <li>– Mispriced transaction pricing</li> <li>– Impacts from illiquidity</li> <li>– Excessive fees or charges</li> <li>– Fraud</li> </ul> </li> </ul>

We make the following observations:

1. **Market risk** – This risk stems from uncertainty over market outcomes. Market exposure can be estimated, diversified in portfolios and sized appropriately. In many cases it is rational for people to take high levels of market risk, as it is expected to deliver higher outcomes over a long period of time. Market risk is the main avenue through which significant losses can be experienced by a large portion of the population<sup>4</sup>. A key issue in addressing market risk is misalignment between asset allocation and the investor’s risk tolerance and risk capacity.

<sup>4</sup> See [Market exposure as a major source of systemic risk](#), The Conexus Institute, April 2026

2. **Relative performance risk** – The extent to which it is appropriate for an investor to take on relative performance risk versus sticking to broad market exposures is highly debatable: the literature of contesting views on this topic could readily take us to the moon and back! The role for private assets is an important consideration, as investing in such assets requires accepting relative performance risk as they are typically unavailable in the form of broad market exposure. Managed appropriately through due diligence, portfolio construction and risk management, relative performance risk should not be a source of sizable loss. However, catastrophic loss can occur where a large percentage of assets are allocated to individual investments.
3. **Operational risk** – This risk can manifest in many forms, and in most cases should result in non-catastrophic slippage in outcomes. Fraud is the key avenue through which catastrophic loss may occur. Operational risk can evolve through time. In particular, often schemes are not set up to be fraudulent, but the passage of time may create a path that leads to fraudulent activities.

These risks all need to be understood, well-governed and supported by the availability of relevant information. This consultation is attempting to address certain elements of risks (2) and (3), specifically the selection and provision of individual investments (in particular managed funds) and potential for fraud.

### Motivation #3: Future shape of superannuation system

Over the last four years our State of Super<sup>5</sup> publication has documented some sizable changes in the super industry. A notable recent trend has been the increasing prominence of platform supers, which are attracting flows from both the profit-for-member and master trust sectors. A key driver is members who are approaching retirement with increasingly larger balances are seeking financial advice, with financial advisers switching them to a platform. We suspect that a secular shift in preferences for more control and flexibility (see Motivation #1, point 2) is also playing a role.

The super system has changed in many ways over multiple decades. Some notable changes include:

1. Increased prominence of super in the lifecycle of consumers due to participation at a higher level of Superannuation Guarantee from an earlier stage of life.
2. Growth of the system, which now stands at around \$4.5 trillion and plays a significant role in the financial system and has become the second largest household sector asset behind property<sup>6</sup>.
3. Changing industry composition, which has shifted from a defined benefit-based system available only to a small part of the population towards an industry that is:
  - Dominated by defined contribution funds that transfer risks to consumers.
  - Significant cohort of profit-for-member funds (a relatively unique feature to Australia).
  - Increasingly fewer funds due to significant consolidation in APRA-regulated funds; and,
  - Significant SMSFs sector, currently containing around a quarter of system assets and recently showing renewed growth in the number of funds.
4. Rise and fall in the number of advisers (see Motivation #1, point 3).
5. Significant changes to regulatory settings include:
  - Transition from the Insurance and Superannuation Commission to a twin peaks model of APRA and ASIC, with both significantly increasing their attention to the super sector over time.
  - Significant role of the ATO as chief regulator for the SMSF sector; and,
  - Implementation of the bright-lines Your Future, Your Super performance test, which is influencing the approach to investment within the APRA-regulated sector.

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<sup>5</sup> <https://theconexusinstitute.org.au/wp-content/uploads/2026/02/State-of-Super-2026.pdf>

<sup>6</sup> See *Systemic impacts of 'big super'*, The Conexus Institute, January 2025.

6. Evolving investment models with many super funds having significant investment teams, complex investment programs, sizable direct internal management of assets, and in some cases offshore investment offices.
7. Evolution of super platforms with a service offering targeted at adviser functionality and efficiency. Prominent features include:
  - Large and varied menu of investment choices.
  - A (non-super) wealth platform equivalent which enables an adviser to have a full and integrated view of the client's exposure, while reducing their administration load.
  - Separately managed account offerings, which enable effective updating of client portfolios and provide access to asset-based fees for adviser groups; and,
  - Individual tax structures which enable personalised management of tax situations, notably including around managing tax during the transition from accumulation to retirement.

We think the super system will continue to evolve, with some interesting possibilities to consider:

1. APRA-regulated super funds are likely to become more service-focused rather than largely product and investment-focused entities, especially as attention to the retirement phase increases where personalisation and guidance are more important to address differing member needs. This will pose governance and regulatory challenges.
2. Increased desire for control and flexibility among a cohort of the population (discussed under Motivation #1, point 2), which will pressure funds to adjust their operating models.
3. Technology and AI may be enabled to deliver more tailored services to members. Some of the potential of AI was discussed in Motivation #1 as point 5. The need to address cyber risk is also prominent.
4. Greater scrutiny of product suitability seems required, especially as super funds develop their retirement offerings, but it is difficult to say how this will evolve. While it is important that portfolios are suitable for the risk profile of the individual, this has historically been difficult to assess apart from cases where portfolios have been clearly unsuitable. Preference in retirement are even more problematic as they extend beyond willingness to accept investment risk to trade-offs around aspects such as accepting income and longevity risk, desired shape of income streams, and preference for flexible access to funds. A few issues are noteworthy:
  - a. Risk profiling is very difficult, and we are not enamoured with many of the processes in the industry. It involves a rational and a behavioural piece, education and investment assumptions.
  - b. Solicitation of preferences during retirement have barely been addressed.
  - c. We query the degree to which a one-product-fits-all approach can continue at large super funds (acknowledging the role of intra-fund advice services in providing some support).
  - d. Technology may enable scalable delivery of more personalised offerings.

Further changes to regulatory and policy frameworks seem highly likely to continue as the industry evolves. The challenge for policymakers is whether required policy adjustments can be made in anticipation of changes such as those listed above or will occur on a reactive and hence lagged basis.

In any event, the industry can be expected to adjust to any legal and regulatory changes that may come out of this set of reviews. The history of financial services constantly provides examples of models emerging which adjust to regulatory settings and prosper. SMA's are a good example, allowing advisers a more efficient and effective way to update client portfolios. (Although they also reflect a sector which is lightly regulated.) An important possibility is that imposing onerous regulations on super platforms may lead to advisers increasing the creation of SMSF's where responsibility rests with the SMSF trustees (i.e. the individuals themselves) while implementing through IDPS (wealth platforms) that are regulated less onerously.

## **Motivation #4: Activities which lead to a quality portfolio**

In this section we focus on the set of investment activities which, undertaken well, should result in a quality portfolio.

First of all, suitability of the portfolio to the member’s risk profile is critical, noting this is addressed in Motivation #3. The following diagram outlines the basic set of activities:

Activity	Explanation
1. Overarching investment model	<ul style="list-style-type: none"> <li>• Investment objectives</li> <li>• Risk definition and tolerance</li> <li>• Investment activities to focus on as value-add</li> <li>• Implementation model</li> <li>• Resourcing of investment operations</li> </ul>
2. Portfolio construction	<ul style="list-style-type: none"> <li>• Approach, e.g. SAA vs total portfolio approach</li> <li>• Systems and resourcing to support construction and maintenance of portfolios</li> </ul>
3. Implementation	<p>Approach to aspects such as:</p> <ul style="list-style-type: none"> <li>• Internal vs. outsourced management</li> <li>• Active vs. passive</li> <li>• Investment or manager selection</li> <li>• etc</li> </ul>
4. Risk management	<ul style="list-style-type: none"> <li>• Assessment and monitoring of risk given (1) – (3)</li> </ul>
5. Ongoing review	<ul style="list-style-type: none"> <li>• Review of all activities outlined in (1) – (4)</li> </ul>

Below we apply this framework to a few existing models of how consumer portfolios are being implemented in practice. We also give consideration to the regulatory protections attached to different aspects. Note we consider the reality of how implementation actually occurs. For instance, even though all super funds are required to specify an investment strategy, when a consumer is invested via platform super it may actually be the adviser who creates the investment strategy for their client.

	<b>Implementation Model</b>			
	<b>1. Implemented via MySuper default</b>	<b>2. Financial adviser, implemented via platform super</b>	<b>3. Financial adviser, SMSF implemented directly</b>	<b>4. SMSF, implemented directly</b>
<b>1. Overarching investment model</b>	Implemented by super fund Reviewed by APRA	Adviser, within the offerings of the platform	Adviser	Individual
<b>2. Portfolio construction</b>	Implemented by fund APRA sets governance expectations	Adviser Possible platform holding limits	Adviser	Individual
<b>3. Implementation</b>	Implemented by super fund APRA may investigate outcomes YFYS test	Adviser Implemented via platforms services Likely outside YFYS test	Adviser	Individual
<b>4. Risk management</b>	Implemented by super fund APRA sets governance expectations and may review	Adviser Platform may offer risk management and reporting services	Adviser	Individual
<b>5. Ongoing review</b>	Implemented by super fund APRA sets governance expectations	Adviser APRA governance expectations for platform only partly relevant	Adviser	Individual

This may be a useful framework to help support the consultation process. Much of the emphasis of the consultation is on implementation model (2), and how this can be strengthened to improve member protections. This is quite appropriate, including attempting to discern where there was failure against existing requirements and where additional requirements would be beneficial, noting that the costs of any additional requirements will ultimately flow through to clients or members. The table above identifies pathways with fewer protections that we believe warrant closer attention, notably including (3) financial adviser, implemented directly and (4) SMSF, implemented directly.

### **Motivation #5: Distinction between investment governance and investment research**

Appropriately framed investment governance can help to ensure that a strategy and process are put in place and that they are being followed. In the case of super funds (regardless of type) this would reduce the risk of being exposed to a fraud, for instance.

However, investment governance processes do not directly drive good investment outcomes but rather tend to limit downside risks. Good investment outcomes are a function of investment research. We hold a belief that strong investment research capabilities are likely to lead to better performance and perhaps outperformance over time but remains difficult to achieve and not guaranteed. Looking at this issue through the lens of advised models, we expect significant variability in outcomes to arise

from the differing quality of investment research capabilities, implementation models and resourcing across financial advice firms.

Some advice models implement through relationships with consultants and service providers such as multi-asset managers and managed fund rating houses. Some advice models may be built on internal research capabilities, which may be of variable quality. Some, such as Dixon, utilised internal investment management models. The Shield and First Guardian failures highlighted examples where some advice models placed additional reliance on the investment governance activities of platforms (where there were failures in both the initial and ongoing governance processes) and external consultants. In these cases, these advisers not only failed to deliver good investment performance for their clients, but they also exposed their clients to catastrophic loss.

## **Motivation #6: Some reflections on the Shield and First Guardian catastrophes**

Shield and First Guardian were both managed investment schemes (MIS) which handled client monies in a fraudulent manner. They could be accessed via a super platform, an IDPS or directly.

The PDSs of both funds maintained that they offered diversified products with exposure to illiquid assets. The return targets of both funds, especially First Guardian, were generally higher than the return targets of most super funds with a similar level of growth asset exposure. There were signs of something awry, which should have been evident if closer scrutiny was paid.

A number of the platforms which provided access to Shield and First Guardian did not apply and implement position size limits. We believe that tight position size limits may well have significantly curtailed the fraudulent schemes because it would have taken a lot longer for the frauds to achieve scale.

## **Motivation #7: Platform governance requirements not well-defined by legislation and APRA**

We have always held a view that *Superannuation Industry (Supervision) Act 1993 (SIS Act)* and the relevant APRA regulatory frameworks have been largely targeted towards non-platform super funds (i.e. industry funds and retail master trust offerings) rather than platform super funds, even if inadvertently. The language, assumptions and structural concerns throughout the relevant legislation and regulatory documents seem to presume a super fund that constructs, owns, and governs its own investment options and delivers them to a pooled membership base. This is not unexpected since the rise of platforms is a more recent phenomena, and the nature of legislation and policy is that it develops incrementally. We consider formalising the categorisation of super fund types (as proposed in the consultation paper) as a promising attempt to rectify this situation.

Below we offer reflections on the SIS Act and APRA's Investment Governance framework (SPS 530 and SPG 530), as one example of APRA's regulatory framework, in this light.

### **SIS Act**

Section 52 of the SIS Act defines the duties and obligations of super fund trustees through statutory covenants. Trustees must act honestly, diligently, and invest according to a properly formulated investment strategy.

One specific aspect highlights the challenges faced by trustees of super platforms.

1. **Section 52(6)** requires the investment strategy to have regard to risk, return, diversification, liquidity, and the ability to discharge liabilities. However, a platform trustee does not determine what investment each member holds. Typically, this is determined by the member's adviser (or perhaps the member themselves). The trustee can promote the member's financial interests through menu curation, fee oversight, and governance of the onboarding and monitoring process. However, a platform trustee cannot directly optimise the member's portfolio.

## APRA SPS 530 and SPG 530

The purpose of SPS 530 is to ensure that RSE licensees, consistent with their obligation to act in the best financial interests of beneficiaries, prudently select, manage and monitor investments. The investment governance framework must include investment strategies for the whole of each RSE, and for each investment option. SPS 530 is principles-based rather than prescriptive, recognising that investment arrangements have varying complexity and that investment operating models differ across the industry. The standard addresses seven core obligations: investment objectives, due diligence, performance monitoring, strategy review, stress testing, liquidity management, and valuation governance.

Additional challenges exist for super platforms with respect to SPS/SPG 530, which add to the issues outlined above in respect to the SIS Act requirements. These issues relate to a platform facilitating bespoke portfolio solutions that are designed by an adviser, in particular:

1. Performance monitoring
2. Liquidity stress-testing
3. Stress testing

We are not advocating for platforms to have reduced standards. Rather, we are simply identifying that the obligations match better to an industry fund or corporate master trust and do not fit as naturally to a platform where advisers are acting as an intermediary that is overseeing investment strategy.

## Motivation #8: APRA, the YFYS performance test, and relevant connections to this consultation

A consultation is also currently being undertaken on the YFYS performance test<sup>7</sup>. It is well-acknowledged that the YFYS test has benefits and detractors and is intensely debated. In announcing the review Treasurer Jim Chalmers identified three design principles<sup>8</sup>:

*“First, any change to the performance test must uphold member outcomes as the core purpose of the test. Secondly, changes must maintain an objective standard or benchmark for fund performance. And third, any changes must be enduring to set the test up for long-term stability”.*

We have always held the view that a single metric is an ineffective approach to assessing product performance. As an aside it would not have protected victims of Shield and First Guardian because: (a) the product track records were not long enough to qualify for testing, and (b) the funds were acting fraudulently so stated performance would not have been accurate.

Our working view is that a more appropriate model would be a more empowered and resourced APRA. We mention this as additional APRA resourcing may also assist with greater oversight of fund offerings.

## Motivation #9: Sources of poor outcomes from financial advice

Large product-specific losses, including frauds, have resulted in poor outcomes for some advised consumers and associated headlines. However, other advice failings appear to have led to poor outcomes for some consumers, including:

1. SMSF establishment
2. Investment strategies relating to property
3. Wholesale / sophisticated investor misclassification

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<sup>7</sup> <https://consult.treasury.gov.au/c2026-763205>

<sup>8</sup> <https://www.investmentmagazine.com.au/2025/11/chalmers-three-principles-will-guide-performance-test-overhaul/>

Our research has identified further potential areas which may lead to poor future advice outcomes:

1. Limited recourse borrowing arrangements (LRBAs) in SMSFs
2. Retirement advice
3. Contribution strategy and tax advice failures
4. Intra-fund advice quality of super funds (including mechanisms to redirect members from intra-fund advice to other advice pathways where required to properly account for their personal circumstances)

We share these points to help ensure that some of the focus is on the broader potential for advice failings, rather than losses relating to product failings.

## **Motivation #10: Our views on consumer financial literacy and effective consumer-led competition**

Our working view is that the population at large has a low level of financial literacy and is poorly suited to make financial decisions without professional support and guidance. There are many studies which demonstrate this. Member engagement is also a challenge amidst a combination of disengagement, reluctance to embrace financial decisions and various behavioural influences (e.g. procrastination) across many consumers. This situation provides a weak basis for effective consumer-led competition. This has been an important motivation for some policy recommendations from groups such as the Productivity Commission.

It is interesting to reflect on the impact of a financial adviser on the engagement and financial literacy of a consumer. We hold the following working views:

1. Engaging a financial adviser reflects engagement with finances. It could also reflect an acknowledgement that sizable engagement is warranted, and that the consumer self-recognises that they may be time-poor, have little interest, or do not have the requisite skills.
2. Engaging a financial adviser will likely increase engagement, at a minimum because the adviser requests information, explains the financial plan etc.
3. A financial advice relationship may contribute to increased financial literacy as they explain the financial plan.
4. Financial advice increases confidence for consumers, even if just through the mechanism and comfort of having a plan in place.

## **Motivation #11: Duties and responsibilities in an intermediated relationship**

Determining duties and responsibilities in an intermediated relationship is difficult. Much of this consultation focuses on the relationship between a member and super platform where that relationship is intermediated by a financial adviser. We consider it important for this consultation to be more explicit in acknowledging this relationship, especially with regard to issues such as:

1. When, and if, the adviser's duty takes primary responsibility away from the platform trustee
2. The benefits and costs of overlapping duties and responsibilities

The second table in Motivation #4 outlines the current working state of this intermediated relationship (see Implementation model (2)).

We also acknowledge that many platforms have advised and unadvised members, representing direct and intermediated relationships. This warrants further consideration as to what degree the trustee is responsible for the portfolio the member has put in place under either arrangement. That is, it is important to consider how the duties and responsibilities of platforms may differ through a direct versus intermediated lens.

## **Motivation #12: It is more difficult to assess advice quality compared with assessing financial product**

It is difficult to assess financial advice quality. We outline some of the challenges below:

1. Advice is a service with (often) a very long horizon. Given the time horizon it is difficult to assess outcomes against a counterfactual.
2. Advice is multi-dimensional. For instance, as well as an investment plan, advice may incorporate a savings plan or strategies to achieve certain retirement outcomes. To what degree should a component part of the advice be assessed versus overall outcomes, and whether the client achieves their overall financial goals?
3. Not all clients can tell if the advice is good. In a 2012 shadow shopping exercise 86 per cent of shadow shoppers rated the advice they had received as "good". However, ASIC rated only 3 per cent of the plans as 'good'<sup>9</sup>. (*Note: This may not reflect the quality of advice being provided in 2026.*) This has some links to the observation that advice often generates client confidence.
4. A distinction should be made between process and quality, including legal quality versus financial quality. A process may meet legal and regulatory hurdles but not deliver great client outcomes.
5. The outcome of the advice can only be compared against a counterfactual.

In short, product outcomes can often be more readily assessed than advice outcomes. Nevertheless, as the intense debate over the YFYS test testifies (see Motivation #8), product assessment is difficult, multi-dimensional and highly contested. This supports our preference for a resourced, empowered APRA to replace the single-metric YFYS test.

Interestingly, as super funds become more service-oriented groups with a greater focus on retirement outcomes (discussed within Motivation #3), the super sector will face some of these same challenges when it comes to assessing quality of outcomes.

## **Responses to select consultation questions**

### **Targeted reform options**

#### **Proposal 1: Enabling CSLR to deduct payments from compensation**

We make no comment on this section.

#### **Proposal 2: Expanding CSLR subrogation rights**

We make no comment on this section.

#### **Proposal 3: Technical improvements**

We make no comments on this section.

### **Structural reform options**

#### **Proposal 4: Revising the treatment of counterfactual loss for CSLR-eligible financial advice complaints**

Under Motivation #9 we explore the advice topics that have led to substantial claims against the CSLR and consider the advice topics which may create claims in the future.

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<sup>9</sup> <https://www.professionalplanner.com.au/2012/05/shadow-shopping-shows-inability-to-tell-good-from-bad/>

Reflecting on Motivation #9 in the context of this question leads us to query whether the structural reform options are biased to addressing problems of the past, namely product failures which have resulted in the largest financial claims on the CSLR while under-weighting the prospect that this source of claims may decline. The focus on improving governance in the product area by the Government and regulators may reduce product-driven losses, including outworkings from the companion consultation *Enhancing member protections in the superannuation system*. As a consequence, other sources of claim may begin to emerge perhaps related to inappropriate advice.

For instance, it is worth considering harm arising from product failure and poor risk profiling.

- *Product failure lens* – Here potential exists for large losses (although these are not certain). The debate centres around balancing what is reasonable compensation (especially when the counterfactual assessment might be the return that the client could have earned) against ensuring a financially stable CSLR.
- *Poor risk profiling lens* – Sub-optimal outcomes that arise from incorrectly gauging a client’s risk tolerance or capacity could result in either of two scenarios. Overstating a client’s risk profile would see them invested too aggressively, which could lead to them experiencing substantial losses in a market drawdown scenario. However, understating a client’s risk profile could result in them failing to participate appropriately in strong market performance, which could lead to (for instance) lower income in retirement. In this case there may not be a financial loss experienced by the client, but the opportunity cost could be substantial. In both cases, though, the counterfactual approach is the most intuitive way to assess the losses.

The point being made is that the counterfactual approach feels most appropriate, i.e. what position would the client have been left in under more suitable investment strategy (but it does come at a cost to the CSLR). It might be valuable to work through the scenarios of different candidate topics related to future advice failings and considering to what degree a counterfactual is essential to capture the nuance of the claim.

### **Proposal 5: Embedding greater certainty in the special levy framework**

The advice topics that have led to substantial claims against the CSLR and the advice topics which may create claims in the future as considered under Motivation #9 are also relevant to this proposal. Specifically, we query whether the structural reform options are biased to addressing problems of the past, namely product failures, while under-weighting the prospect that this source of claims may decline while other sources of claim emerge.

The three-tier levy feels like it is focused on the product failure scenario. Through this lens we can see some merit in seeking funds from Tier 2 and Tier 3 (this should not be read as a full endorsement). However, when we consider other candidate sources of advice failure leading to claims the framework feels far less appropriate.

Again, consider the case of poor risk profiling. Here there would be no product failure, hence no direct contribution to the failure by product manufacturers (unless they had mis-represented the risk profile of their products). Under this scenario, the waterfall starts to look unfit for purpose.

The point we are trying to make is that the waterfall might be appropriate for some scenarios of advice failure, but not for others. We reiterate the value in working through the scenarios of different candidate topics of future advice failings and giving consideration to what an appropriate waterfall funding structure may look like.

### **Proposal 6: Considering responses to the role of SMSF losses in pressure on the CSLR**

Our general approach to the issues outlined in this section is to focus on the order of precedence. There are two issues:

1. The role of a financial adviser providing professional advice
2. Recommendation to create a SMSF

Our initial view is that financial advice is the threshold issue for determining eligibility to compensation from the CSLR, rather than the choice of super fund structure (e.g. industry fund, retail master trust, super platform or SMSF). We are not convinced that consumers have enough awareness and confidence to challenge the recommendation provided to them by their financial adviser. Strong information asymmetry exists in most adviser-client relationships in terms of financial knowledge, and in some cases influence. We note that the financial adviser making the SMSF recommendation is contributing to the CSLR.

However, on further consideration we are more open to the proposition changes when viewed through the super trustee lens. Here, trustees of industry funds, retail master trusts, and super platforms all have duties and responsibilities. Trustees of SMSFs do as well, but the trustee is (generally) the advice client. Is the advice client has failed in these duties and responsibilities, even if they didn't understand them, should they be eligible for compensation?

If SMSFs are ruled out of the CSLR then we think there would have to be a substantial education program and an appropriate timeframe for transition to enable SMSF members / trustees to make an informed decision around whether they want to remain in an SMSF and, if not, to make appropriate unwind and transition arrangements. There would also be an issue relating to grandfathering arrangements, namely existing SMSFs (created under advice) versus new SMSFs.

On the issue of SMSFs contributing to the levy, an important consideration is that contributions are limited to only those SMSFs who are eligible for compensation through either being advised to establish an SMSF and/or are receiving ongoing advice related to their SMSF). This may be difficult to identify. We can't see why members of SMSF's who are ineligible to make claims should need to contribute to the CSLR.

### **Proposal 7: Facilitating levying of Managed Investment Scheme (MIS)-related losses**

We see merit in exploring this idea. Consider a scenario where MIS could be monitored and risk-rated by ASIC. In our view this would work along the lines of the key risks we frame in Motivation #2, perhaps with a low-medium/high rating applied both in terms of investment (i.e. market and relative performance) risk and operational risk.

We consider it important to identify between these two categories of risk because it may be rational for many people to have high exposure to investment and performance risk, in anticipation that this will deliver higher returns. Disclosing risk in a consumer-friendly manner can be beneficial and can reinforce importance conversations between consumers and advisers about the trade-off between return and risk (although some work would be required to identify terminology that resonates). Disclosing a basic operational risk assessment would likely lead to a lower use of MIS with medium-to-high operational risk categories for a range of reasons including professional indemnity insurance for advisers.

We are not advocating that this is essential. It depends on many factors including:

- Other initiatives implemented, such as due diligence requirements for platform supers. These may reduce the need for additional consumer protections.
- Cost of implementation, in particular the resourcing required for ASIC to develop and maintain a MIS rating framework of suitable standard. The contestability of ratings warrants consideration.

Applied to the challenge of CSLR funding, we think it would be intuitive for MISs with higher operational risk ratings to make larger contributions. We don't believe that investment and performance risk should be a driver of CSLR funding levels (in the proposed waterfall model), because it might be appropriate for some advice clients to take on high levels of investment risk.