22 May 2026

By Upload.

Dear Sir/Madam

Re: Compensation Scheme of Last Resort – reform options to support ongoing sustainability

AFMA welcomes the opportunity to provide comment on the consultation *Compensation Scheme of Last Resort – reform options to support ongoing sustainability*.

AFMA would like to thank Treasury for including questions around the metric following AFMA and others flagging the concerns around their targeting effectiveness in December.

This submission contains responses to many of the matters raised in the consultation paper, however, our priority concerns are:

(1) The entity metrics used to impose levies on Large Securities Exchange Participants (LSEP) and Large Futures Exchange Participants (LFEP) and;

(2) The total allocation to the LSEP and LFEP sectors once either workable metrics are employed or firms return unused retail licence authorisations.

1. *Application of the current Special Levy entity metric for the LSEP and LFEP subsectors*

AFMA understands that the Government's intention is to recover levies from 'Retail-facing sub-sector' firms as the third tier of its CSLR Special Levy Waterfall Framework.

As a general point, AFMA reiterates that imposing levies on non-retail sub-sectors is not appropriate given the scope of compensation eligibility. Special levy sub-sectors comprise both retail and non-retail business. Examples relevant to AFMA include Large Exchange Participants (see further comments below), Deposit Product Providers and Payment Product Providers. In such cases, entities should have the option to submit data splitting out the retail/non-retail components so that levies are only imposed on the retail components. The entity metric (exchange messages) applied the recent Special Levy for LSEP and LFEP firms in a way that did not distinguish between the services these firms provide to retail clients and wholesale clients (i.e. it captured ***all*** trading business done by firms with a 'Retail authorisation' on their Australian Financial Services License (AFSL)). The result was that the allocation intended for retail-facing LSEP firms ($4.4 million) and LFEP firms ($196,000) fell largely on institutional businesses that do *no retail* business.

This is a policy outcome that is far from ideal as it is inconsistent with the stated Government objective to recoup levies from retail facing sub-sectors and is likely not sustainable.

2. *AFMA's proposed Special Levy entity metric for the LSEP and LFEP subsectors*

AFMA proposes that the appropriate metric for apportioning levies inside the LSEP and LFEP segments is the **total number (i.e. retail and wholesale) of *trades* ('exchange lots' for futures) minus those associated with accounts treated as non-retail under the Corporations Act.**

This would better give effect to the Government's stated objective to recoup levies from retail facing sub-sectors as it excludes trades associated with accounts the firm treats as non-retail client accounts, which includes professional investors and sophisticated investors.

We propose this structure of the total number (which is already reported to ASIC) minus an additional field so that fully-retail firms will be under *no obligation* to do additional calculations or reports. Our mostly wholesale members' preferred option is a single report but propose to take on the additional reporting obligation of the number of non-retail trades to avoid or minimise the reporting burden on fully retail participants.

Predominantly retail firms that do a small amount of non-retail business would receive a small benefit if they choose to report those trades and so would be mildly incentivised to do so, but under our proposal there would be no obligation to do so.

Trades(/exchange lots) are a preferable metric to 'messages' as:

- it is generally not possible to report *messages* by account type – messages are complex and are likely to get intermingled by trading systems dealing with both retail and wholesale accounts;
- ASIC's Cost Recovery Levy framework already utilises trades (or lots for futures) as a metric and is 90% weighted to trades (or lots) – we note that what is appropriate for ASIC funding – things that cause cost to ASIC – may not be appropriate as a proxy for firm size for CSLR purposes;
- AFMA has surveyed our members and understands that firms would be pleased to provide this information as the number of trades associated with accounts that are treated as non-retail by firms are readily calculable and will facilitate a more equitable assessment of retail related transactions executed on the exchange.

To facilitate the provision of this information we would request that an additional field be made available by ASIC as part of its annual industry funding return form. This will then be submitted by firms with non-retail trades to ASIC under the same requirements for other transactional information submitted to ASIC and would be subject to the same level of robust assurance processes and the same potential for regulatory scrutiny as other regulatory reporting.

We note that all market participants should be aware of which accounts they treat as non-retail given the Corporations Act distinctions between retail and non-retail clients/accounts.

We note also that all market participants should be aware of the number of transactions associated with each account – this is necessary for billing.

As these are the only pieces of data required for a once a year reporting we suggest that this is a modest ask of firms and would be optional for all firms and not commercially necessary for wholly retail and mainly retail firms.

AFMA advises against any requirement to 'look through' institutional orders to try to determine the status of the original investor. Such an approach would not be consistent with the application of the Corporations Act to services provided to retail and wholesale clients and would introduce operational risk and complexity that is not warranted.

In addition, it should be noted for various reasons, some firms may continue to treat wholesale clients as retail to afford them the higher standard of protection available to retail clients. These firms may be incentivised to review the accounts they currently treat as retail as they will face additional costs for retail account related trades. However, AFMA submits this practice should remain at these firms' discretion and is a separate matter to its proposed changes to levy metrics. Firms should be at liberty to report all trades as retail for CSLR levy purposes.

Further details on how this could work in practice are included in Attachment 1 to this letter.

3. *Reduction in the total allocation to the LSEP and LFEP subsectors*

AFMA submits that a substantial lowering of the total allocations of levies to the LSEP and LFEP subsectors will be warranted to complement either the proposed change to the metric, or the anticipated relinquishment of retail licence authorisations by institutional businesses should there be no change to the metric.

If no changes are made to the total allocation to the LSEP or LFEP segments, changing the calculation as proposed or a shift of institutional businesses away from retail licence authorisations would substantially increase the relative burden of levies on the remaining retail-facing firms. We believe the remaining retail-facing firms would largely be small retail brokers that would struggle to afford a larger allocation, particularly given its likely increase in coming years. Please note that AFMA does not represent small retail brokers but nonetheless we recognise the serious challenge that they would face.

AFMA would be pleased to assist with any further information which may assist Treasury in modelling appropriate changes to the levy metrics and reductions to the LSEP and LFEP allocations.

Yours sincerely

Damian Jeffree

Damian Jeffree
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Attachment 1: ***New Business Activity Metrics for use with Compensation Scheme of Last Resort Special Levies Calculations***

Where an entity holding an Australian financial services (AFS) license holds an authorization that allows them to provide financial services to retail clients, the licensee will include in their annual reporting via the structured fields in [ASIC Regulatory Portal] as part of their annual Industry Funding Annual Return, the following optional additional Business Activity Metrics:

Market infrastructure and intermediaries sector			
Subsector	***Summary of business activity metric***	***Pre-filled by ASIC***	***Description of activity metric information required***
Large Securities Exchange Participants	*Number of large securities exchange transactions for the financial year executed for non-retail client accounts.*	*No*	*Transactions are transactions that:* *1. are executed on, or reported to, a large securities exchange in the financial year; and* *2. the operator of the large securities exchange reported to ASIC's Market Surveillance System; and* *3. ASIC's Market Surveillance System recognised as executed transactions.* *4. are executed for accounts that the participant treats as non-retail client accounts (includes any accounts the participant treats and is entitled to treat as wholesale client accounts).*
Large Futures Exchange Participants	*Number of large futures exchange lots in the financial year executed for retail client accounts.*	*No*	*Lots are lots that:* *1. your entity executed on, or reported to, a large futures exchange in the financial year; and* *2. the operator of the large futures exchange reported to ASIC's Market Surveillance System; and* *3. ASIC's Market Surveillance System recognised as executed lots.* *4. are executed for accounts that the participant treats as non-retail client accounts (includes any accounts the participant*

			treats and is entitled to treat as wholesale client accounts)

As an example, an entity might have 5,000,000 total trades and they report 4,900,000 of which are non-retail leaving 100,000 as retail leviable for Special Levy purposes.

This information would be included in the Business Activity Metric Checklist for the relevant reporting years.

Timing
As with other regulatory data reported via the site – reporting will be for the prior financial year. Submission is required typically within 4 months of the end of the financial year (or 3 months for some), or as advised. Indicative timings for 2026/7

July-Sept 26	*Market participants receive business activity metrics from ASIC [For 2025-26 financial year].*
Nov-Dec 26	*Treasury drafts CSLR Special levy instrument which is tabled and approved in Parliament.*
April 27	*Special CSLR levy invoice issued by ASIC (with levy applied only for the volume of trades applicable to retail clients)*

Wholesale/Retail

Consistent with the Corporations Act all clients are retail unless they meet the various criteria to be classified as a wholesale client.

Licensees are not obligated to treat clients as wholesale merely because they meet the criteria or report their trades as non-retail but have the option to do so. Under the proposed reporting approach, firms will have the option to classify all clients trades as retail, although this may increase their Special Levy.

This reporting approach may be adopted by firms with a large numbers of accounts that they treat as retail and elect not to implement any process to determine whether these accounts could be wholesale. This makes the scheme less administratively burdensome.

Levy calculation

Where supplied, ASIC would subtract the number of non-retail trades from the already reported total number of trades for Large Securities Exchange Participants to determine the Special Levy payable by each market participant towards the Compensation Scheme of Last Resort.

ASIC would similarly subtract the number of non-retail lots from the already-reported total number of lots for Large Futures Exchange Participants to determine the Special Levy payable by each market participant towards the Compensation Scheme of Last Resort.

Attachment 2: ***AFMA's Responses to other Consultation Questions***

Proposal 1: Enabling CSLR to deduct payments from compensation

Questions

1. Do you support allowing the CSLR operator to reduce compensation payments by considering all relevant amounts that a claimant may receive in connection with the matters covered by an AFCA determination?

AFMA supports removing the potential for double recovery by compensation claimants. There is no logical reason for the current limitations on what relevant amounts might be considered, and in the context of a scheme of *last resort,* it is logical that all non-last resort avenues are pursued and considered when making last resort payments.

2. What factors should the Government consider in terms of timing?

   2.1. How should the reform balance ensuring timely payment of claims to consumers with ensuring accurate information about other payments?

The approach flagged of engaging relevant third parties flagged in the paper seems sensible.

   2.2. Should the CSLR have a clawback mechanism for cases where deductible amounts were not known at the time of payment?

A clawback mechanism would prevent double recovery and is therefore supported in principle.

Proposal 2: Expanding CSLR subrogation rights

Option 1: Expand subrogation to the full AFCA determination amount

Option 2: Extend subrogation to additional recovery sources

Questions

1. Do you support Option 1 or Option 2 to expand the CSLR operator's subrogation rights?

AFMA would support the broader model for subrogation rights under Option 2. Net costs to CSLR should not be higher than they need to be due to variances in legal technicalities across states.

Are there sufficient benefits to pursuing legislative reforms in the context of limited recoveries?

While gains are noted as likely to be modest, we expect they will meaningfully contribute to a substantial overall lessening of costs for the scheme, therefore we see the benefits as worthwhile pursuing.

Proposal 3: Technical improvements

Questions

2. Do you support the additional technical improvement proposals?

Which technical improvements should be prioritised?

Please see our above letter and Attachment 1 for our top priority which is the improvement of Entity Metrics for Large Securities Exchange Participants and Large Futures Exchange Participants. We also submit that, in apportioning future special levies in other sub-sectors, the same consideration is given with respect to the degree to which each entity within that sub-sector actually provides services to retail clients.

Outside of this we would prioritise the prevention of payments for unauthorised conduct and for products and services that fall outside the scope of CSLR. As this would better align the CSLR payments with the intent of the scheme we see this as an important reform.

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

Option 1: Limiting CSLR-eligible compensation to capital losses only
Option 2: Prescribing a counterfactual benchmark

Questions

1. Do you support Option 1 or Option 2 to support scheme sustainability?
   1.1. If not, are there alternative options that would better balance certainty, fairness and sustainability?

AFMA strongly supports changes to the counterfactual loss for CSLR-eligible financial advice complaints. These have been a large contributor to scheme costs and are not in keeping with the last resort nature of the scheme.

Option 1 is the most likely to keep scheme costs in check and is most in line with the original aims of the scheme which was to go some way to compensating capital loss rather protecting a minimum level of gains.

2. What considerations should the Government have for choosing an implementation pathway (fairness, time to implement, cost saving)?

The main focus should be scheme sustainability. Currently the scheme is not sustainable.

3. Is CPI or Government Bond rate a more appropriate basis for calculating the counterfactual position?

The Government Bond rate is generally seen as the risk-free investment rate. If Option 2 is used we would see this as the most appropriate rate to use.

What alternative rate could be used?

Proposal 5: Embedding greater certainty in the special levy framework

Questions

1. Do you support introducing a rules-based three-tier special levy waterfall to manage funding shortfalls when scheme costs exceed one or more sub-sector caps? Are there alternative tier structures that would better balance certainty, fairness and sustainability?

AFMA supports the structure being proposed given the shortfall in funding. However, we also support the Minister retaining discretionary powers as the allocations under the formula have the potential to be damaging to subsectors. As flagged above, in applying this discretion when apportioning special levies within retail-facing sub-sectors, regard should be given to the degree of retail-facing activities each entity actually performs within that sub-sector relative to other entities in that sub-sector.

2. Is 'connection' an appropriate basis for allocating costs across tiers in a repeatable framework?

Connection is aligned with the framework and policy approach embedded in the CSLR, noting that as the consultation notes 'firms paying the levy were not themselves responsible for the underlying misconduct'.

This lack of connection with 'the underlying misconduct' is true for all Tiers of the proposed waterfall. 'Connected' should not be used to suggest any connection with the harm, only the products and or services.

We do not accept the analysis that the charges 'create a price signal that reinforces' good behaviour. Connected firms are paying for poor practices with which they had no causal connection. Firms mainly have control over their own practices, and that others will be levied in the event of poor practices and firm wind-up is not a constructive price signal.

AFMA does support limiting further costs amongst providers to the retail facing subsectors.

   2.1. If not, what alternative approach should be used, and how could it be implemented effectively in a way that is sustainable and facilitates timely payments of compensation to consumers?

N/A.

2.2. How should ‘connected’ sub-sector/s be identified in practice?

‘Connected’ should follow the internal logic of the CSLR of associated services, noting again that these firms are not in fact connected with the failings that led to the compensation claim.

3. What evidence or data should be used to establish ‘connection’ to the losses (recognising the challenges of attributing fault across a value chain)

AFMA again notes that fault is *not* being attributed across the value chain in the CSLR system.

‘Connection’ to the loss is driven by a policy approach unrelated to fault.

3.1. What governance or assurance steps would improve confidence in the classification of a sub-sector as ‘connected’?

While each case will be different, worked examples of how the connection policy would be likely to be applied in various scenarios would be helpful.

4. Are the proposed special levy caps appropriately calibrated to provide certainty and support sub-sector viability, while enabling timely compensation payments?

As per our letter, we suggest the changes to metric or licence authorisations will result in the current allocation to LSEP and LFEP being unsustainable for remaining participants.

If not, at what level should special levy caps be set for each tier, and how do they produce a better overall outcome for the financial system?

The allocation to these sectors should be such that the changes to participation do not themselves drive cost increases.

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

Option 1: Include a subset of SMSFs within the CSLR special levy framework
Option 2: Exclude SMSFs from CSLR eligibility

Questions

1. Do you see merit in levying a subset of SMSFs to support CSLR special levy funding pressures?
2. Two sub-options are provided to define the SMSF cohort subject to the levy (that is, an opt-in or an opt-out mechanism). Which option do you think best balances the need for scheme sustainability with the risk of imposing costs onto SMSFs with no relevant connection to advice-related misconduct? Or is there an alternate option that would best balance these factors?

2.1. What factors should be considered for an opt-in or opt-out model to minimise the regulatory burden for SMSFs?

Option 1
Imposing the levy alongside an opt-out mechanism:

3. Would allowing SMSFs to opt-out from the levy and CSLR compensation eligibility be an appropriate means to target the levy? What benefits and risks might this approach entail?
4. When should an SMSF be required to opt-out or begin paying?
5. Should an SMSF be able to revoke their decision?

Imposing the levy alongside an opt-in mechanism:

6. Would allowing SMSFs to opt-in to the levy in order to maintain CSLR compensation eligibility be an appropriate means to target the levy? What benefits and risks might this approach entail?
7. When should an SMSF be required to opt-in?
8. Should the timing of opting in impact their eligibility for a claim from the CSLR?
9. If SMSFs were included within the CSLR Special Levy Framework, what do you see as a reasonable and sustainable maximum annual levy per SMSF?

Option 2

Excluding SMSFs from CSLR eligibility may help to alleviate funding pressures on the scheme. How do you think this option compares to the sub-options in option 1 above in terms of scheme sustainability and risks for the SMSFs?

No response.

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

Option 1: Broad-based levy on all MISs
Option 2: Risk-informed levy approaches

Questions

1. If proposal 5 were implemented, should the Government identify a 'lower-risk' segment of the MIS sector that would not be subject to the special levy?

AFMA does not support the inclusion of any MIS in the CSLR scheme or any other investment category.

If there were to be a levy then a risk-informed levy could reduce the burden placed on entities not generating significant risk.

1.1. If so, what indicators do you consider should be used to identify a MIS as low risk?

1.2. If additional data were required to be collected to implement risk informed levying, would this option create any additional regulatory burden for the MIS sector?

2. What do you consider the consequences would be of excluding low-risk MISs from the special levy?

   How should the Government weigh the trade-off between minimising administrative costs with the benefits of a more targeted approach?

Proposal 8: Improving recovery of unpaid AFCA determinations within corporate groups

Option 1: Refinements to existing frameworks that deter asset shifting
Option 2: Related-entity liability mechanism

Questions

1. To what extent are AFCA determination liabilities avoided through misuse of corporate and insolvency frameworks, shifting CSLR costs onto the broader sub-sector?
   1.1. To what extent does this include transactions between solvent entities? Do transactions which result in the evasion of these liabilities also occur between unrelated entities?
2. Are there any gaps or limitations in the current corporate and insolvency frameworks that may allow assets or value to be shifted away from the respondent firm? How might the existing provisions be enhanced to increase their deterrent effect to help prevent the occurrence of the underlying transactions and conduct?

If a new related-entity liability mechanism was established (Option 2), how should it be designed to appropriately share responsibility for AFCA liabilities where related entities are benefiting from the respondent firm's business or activities, while ensuring it remains proportionate, builds in appropriate safeguards and preserves long-standing corporate principles?

No response.