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By email: CSLR@treasury.gov.au

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The Treasury
Langton Crescent
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Dear Manager

Discussion Paper: Implementing Royal Commission Recommendation 7.1 – Establishing a Compensation Scheme of Last Resort

Thank you for the opportunity to comment on The Treasury's Discussion Paper, *Implementing Royal Commission Recommendation 7.1 – Establishing a Compensation Scheme of Last Resort* (December 2019).¹ This submission has been drafted by Consumer Action Law Centre with contributions and endorsement from the following organisations:

- CHOICE
- Consumer Credit Legal Service (WA) Inc
- Financial Counselling Australia
- Financial Rights Legal Centre

Information about the contributors to this submission is available at **Appendix A**.

This submission comments on critical design features and should be read in conjunction with the Joint Consumer Group submission to the Ramsay Review Supplementary Issues Paper.²

Need for this reform

A series of financial scandals have left many Australians out of pocket and, in some cases, resulted in the loss of the family home or a secure retirement. Scandals have not just occurred in relation to financial advice; many people have suffered uncompensated loss from the mis-selling of complicated investment products, collapse of managed investment schemes and predatory conduct by credit providers.

¹ Available at: <https://treasury.gov.au/consultation/c2019-43848>.

² Joint submission to The Treasury, *EDR Review – Supplementary Issues Paper*, 4 July 2017, <https://consumeraction.org.au/edr-review-supplementary-issues-paper/>.

Uncompensated losses arise when consumers and small businesses have been awarded compensation by an external dispute resolution scheme, court or tribunal, but due to, for example the inability of the financial firm to pay, they do not receive that compensation. That is where our current framework for compensating loss fails.

When the loss goes uncompensated, the harm experienced by individuals and families can be severe, with flow-on costs for the community, Government and trust in financial firms.

A compensation scheme of last resort (**CSLR**) must be established to prevent the harm that results from uncompensated losses, and to rebuild trust and confidence in Australia's financial system. A CSLR is the missing piece of our financial services regulatory architecture.

We strongly support the Government's commitment to implement a CSLR, and to establish a broad scheme that goes beyond financial advice disputes.

Coverage beyond personal advice

Q1. What is the appropriate coverage for the CSLR, beyond the provision of personal advice?

A CSLR must have a 'broad coverage' approach as outlined in the Discussion Paper, meaning that the CSLR would apply to all activities that require a firm to hold AFCA membership. This would include credit, insurance and superannuation, and would include coverage of prudentially regulated activities. All AFCA determinations, including those against voluntary members, should be eligible as a bare minimum, ideally with extension to court and tribunal determinations.

Broad coverage is essential, regardless of the final funding model. The CSLR is a safety net—that means all disputes must be covered, including credit and superannuation. The very point of a compensation scheme of last resort is to stop people falling through the cracks, so we must not design a system with cracks from the outset.

If the CSLR is to factor in the lower risk of unpaid determinations for prudentially regulated activities, this should be accounted for in the funding model—not in the scheme's coverage. There are good reasons for prudentially regulated activities to be included in CSLR coverage, even if these activities are less likely to result in unpaid determinations. Broad coverage will provide clarity for consumers. By comparison, the low- and mid-coverage approaches would result in significant confusion and gaps in coverage. People will not understand why certain claims are covered but others are not, and will be highly unlikely to understand which activities are prudentially regulated or not.

Importantly, prudentially regulated firms like banks, insurers and super funds will benefit from improved consumer trust in the financial system that a broad-coverage CSLR can help deliver—particularly banks. Consumers are unlikely to understand arguments along the lines of "prudentially regulated services won't be in the scheme because their risk of failure is so low." Many will think this is another case of big and powerful firms avoiding responsibility when things don't go as planned. It is a good thing if consumers of certain services do not have to claim on the scheme—but the safety net should be there. This is the only way we can rebuild trust in the whole sector.

The policy process to establish a CSLR has taken nearly a decade, with numerous inquiries along the way. Now is the time to future-proof compensation arrangements in the financial system with a broad coverage CSLR, rather than attempt to fix gaps in a failed system after the fact.

Finally, it is important that larger, prudentially regulated firms have 'skin in the game'—that is, if larger market participants are involved in the clean-up, they will have appropriate incentives to prevent risky behaviour across the industry in the first place. Had some of these firms supported reforms proposed by consumers and consumer groups for years, there may be less historical uncompensated loss. Further, the remuneration models offered by

large, prudentially regulated firms to intermediaries and other smaller financial services business that are more likely to fail have directly contributed to the problems the CSLR is designed to fix.

Q2. Would there be any unintended consequences from initially excluding court and tribunal decisions or from excluding voluntary members of AFCA from the CSLR?

Courts and tribunals

Yes. Exclusion of court and tribunal decisions would distort choice of forum and would reduce access to redress.

Access to effective redress should not depend on which forum heard a dispute. The CSLR should cover relevant unpaid compensation awards from AFCA, tribunals and courts. It is important that the design of the scheme does not distort consumer choice about dispute resolution forums.

It is rare for a consumer to choose to take their dispute to court instead of the relevant EDR scheme, so the additional burden on a CSLR would be minimal. There are reasons why consumers might want to take their matter to a court. For example, it is a much more transparent forum. Moreover, consumers have a right to take their matter to a court should AFCA not decide in their favour. It may be reasonable, however, to align the claims limit and compensation caps for court awards to that of the corresponding AFCA jurisdictional claims and limits.

Marissa and John's story

Marissa and John were interested in refinancing their property, and consolidating their debt. John was a truck driver, and Marissa also had a courier business. They were listening to the radio and heard about a local place offering refinances. They went and met with a couple, who were mortgage brokers and who would also act as the mortgage manager of the subsequent loan. The brokers promised that after 12 months the interest would drop from 10.95% to the standard variable rate. The payments looked very tight, but Marissa and John thought if they tightened their belt and ate peanut butter sandwiches for a while they could make it work for 12 months. It didn't work, and after 12 months they did not get a lower interest rate and they fell behind. Marissa and John raised a complaint and they received a bundle of documents from the lender. Some of these documents that had been completed by the brokers were just plain wrong. In fact, some of Marissa and John's signatures were actually forged. Marissa and John lodged a complaint in the relevant EDR scheme, who after a number of months did not find in their favour. They then commenced proceedings in the Tribunal (who had jurisdiction at the time), and successfully obtained a judgment for their loss of \$90,000. But, the lender by then had already taken possession of their home. They could not enforce the judgment, as the couple did not have insurance and no assets (or if they did, they never claimed) and had since ceased trading. Marissa and John are now high and dry with a worthless judgment and left with a shortfall on the property.

Source: Financial Rights Legal Centre, 2015

Small claims

At the very least, the initial CSLR should include small claims jurisdictions in courts and tribunals. For example, people can bring consumer credit matters under the *National Consumer Credit Protection Act 2009* to the Federal Circuit Court's small claims jurisdiction, which can award compensation up to \$20,000. Consumer Action has

assisted people experiencing vulnerability to bring litigation against consumer lease providers for unaffordable consumer leases, and payday lenders for breaches of the credit laws.³

Inclusion of small claims jurisdictions are unlikely to place an onerous burden on the initial CSLR because the compensation caps are very low, particularly by comparison to AFCA. These forums are likely to have lower numbers of relevant claims than AFCA.

Class actions

Ideally, class actions would ultimately be included within the CSLR. However, we acknowledge that there is further work to be done on modelling the inclusion of class actions within the CSLR. We support the exclusion of class actions during the set-up phase to allow further modelling. A clear timetable for this modelling should be established.

Modelling and timetable for inclusion

If, contrary, to our recommendation, courts and tribunal awards are excluded, Treasury must establish:

1. a clear timetable to including in the CSLR any forums that are ultimately excluded during set-up phase—we suggest a maximum of 3 years; and
2. a clear commitment to establishing an independent and robust evidence base, including modelling, for inclusion/exclusion during that time.

Voluntary members

On balance, we support voluntary AFCA members being required to financially contribute to funding the CSLR. Allowing some AFCA members to avoid coverage by the CSLR will create a risk of future unpaid determinations, which may undermine community confidence in AFCA and the financial system as a whole. There are well known gaps in the membership of AFCA due to lags in establishing licensing regimes for emerging industries in the financial sector. Current firms that are not required to be licensed and therefore are not required to join AFCA include:

- Debt management firms—despite Recommendation 10 of the Ramsay Review Final Report, delivered to Government on 3 April 2017;
- ‘Buy now, pay later’ lenders; and
- Small business lenders, including those providing small fast loans to people working in the gig economy, such as Uber.

While it is important to encourage emerging industries to voluntarily join AFCA, firms who join also obtain the benefit of appearing to be trustworthy and ‘good’ industry players. Such firms should have no concerns around making a small contribution to the CSLR. Nor should firms not get the benefit of improved trust and confidence in its services without the corresponding obligations. For example, in a recent submission to the Senate Select Committee on Financial Technology and Regulatory Technology ‘buy now pay later’ lender Afterpay, effectively arguing for continued self-regulation, pointed to its voluntary membership of AFCA:

Although Afterpay is not subject to the NCCP Act, we have been a voluntary member of the Australian Financial Complaints Authority (AFCA) (and its predecessor scheme) since 2016. Providing consumers with

³ <https://consumeraction.org.au/20190913-rent4keeps-consumer-leases/>.

access to AFCA is a critical consumer protection and we are proud of the low number of complaints that are taken to AFCA by our customers.⁴

Providers such as Afterpay should be equally proud of its customers having redress pursuant to a CSLR.

Funeral expenses policies

The problem of funeral 'expenses only' policies highlights the need for voluntary members to contribute to the CSLR. This problem is well-known to Treasury and Government.

We have long held concerns about harm caused by the Aboriginal Community Benefit Fund (ACBF) (now trading as Youpla) in Aboriginal and Torres Strait Islander communities. One person harmed by the operations of ACBF was Ms Tracey Walsh, an Aboriginal and Torres Strait Islander woman living in Victoria. Ms Walsh provided evidence of her experiences to the FSRC. ACBF was the catalyst for Recommendation 4.2 of the FSRC.

Since the FSRC, our organisations continue to take enquiries about ACBF and hear stories of harm. These experiences are exemplified by:

- case studies 1 and 2 to our recent submission to The Treasury;⁵ and
- a new report from Consumer Action Law Centre and the Victorian Aboriginal Legal Service, *Consumer Issues in Victorian Aboriginal Communities: Integrated Practice Project Final Report 2020*.⁶

Until the passage of recent FSRC reforms,⁷ providers of funeral expenses policies were not covered by the financial services licensing and conduct regime of the *Corporations Act 2001* (Cth) (**Corporations Act**) due to their exemption as financial products pursuant to section 765A of the Corporations Act and regulation 7.1.07D of the *Corporations Regulations 2001* (Cth).

This licensing loophole means that funeral expenses providers have not been compulsory members of AFCA, and would not be required by law to join until the licensing obligations come into effect under the reforms, and any providers seek and obtain a licence. Even at that time, there are no guarantees that previous and existing policyholders affected by past misconduct by providers of funeral expenses policies will be compensated.

If, for example, ACBF goes out of business, it may leave claim holders facing the loss of past contributions and no future coverage for the costs of their funerals. It would be a perverse outcome if communities were to bear the cost of poor legal drafting, and inappropriate legal loopholes.

ACBF was required to be a member of an EDR scheme as a result of enforcement action taken by ASIC, but was not required to be a member under legislation. Recent legislative changes require ACBF to obtain an Australian Financial Services Licence and EDR membership if the company offers new funeral expenses-only policies after 1 April 2020. However, ACBF is not required by legislation to do so for previous or existing policies - ACBF would be considered a 'voluntary member' and would not be covered by the proposed CSLR. This has the potential to harm a large cohort of current and former policyholders who would miss out on compensation for misconduct if ACBF were to become insolvent. We have made additional comments about the definition of 'voluntary' below.

⁴ AfterPay Limited, Submission to Select Committee on Financial Technology and Regulatory Technology, Submission 83, p 13: <https://www.aph.gov.au/DocumentStore.ashx?id=79fcodda-c2ad-4930-9192-5a03a726df16&subId=675279>.

⁵ Joint submission to The Treasury, *Removal of the exemption for funeral expenses policies— Exposure draft legislation*, 22 October 2019, Appendix B: Case studies, p 10: <https://consumeraction.org.au/wp-content/uploads/2019/10/221019-Joint-Submission-Funeral-expenses-exemption-Final.pdf>.

⁶ See pages 8-14 on funeral insurance: <https://consumeraction.org.au/consumer-issues-in-victorian-aboriginal-communities-integrated-practice-project-report-2020/>.

⁷ *Financial Sector Reform (Hayne Royal Commission Response—Protecting Consumers (2019 Measures)) Act 2020* (Cth).

Definition of 'voluntary'

Importantly, Treasury should clarify the meaning of 'voluntary' member. We recommend that a firm consider a non-voluntary member of AFCA for the purposes of CSLR funding if the firm is required to join AFCA as a condition or requirement of:

- a relevant licence;
- a relevant industry code that the firm is required or chooses to subscribe to; and
- an enforceable undertaking or other enforcement action.

Regardless of whether voluntary members fund the scheme, determinations against all types of members should be included within the coverage.

Funding arrangements

The most critical issue for consumer advocates is that the final funding model does not undermine or reduce the scope of coverage. Treasury must ensure that the final funding model:

- has appropriate incentives to reduce misconduct and risky behaviour across the financial system as a whole;
- is sufficient and sustainable to fund broad coverage over time and withstand shocks; and
- ensures timely payment to consumers to mitigate the known impacts of uncompensated financial losses from firm misconduct.

Q3. To what extent should the funding model be based on risk?

We support a risk-based funding model, including some fixed administration fees, with some consideration of a particular firm's capacity to pay.

We recognise that the funding mechanism will be the most controversial part of a new scheme. In particular, some large institutions may argue that they should not contribute to the cost of the scheme, as they are able to compensate their customers for any loss. There are several reasons, however, that the entire industry broadly should contribute to the cost of the scheme, and that a significant capital base be established from the beginning of the scheme.

First, many of the financial advice scandals have been the result not only of poor financial advice, but also financial products that have not been appropriate to the needs of consumers. Those products are, for the most part, designed and/or distributed by larger, better capitalised industry participants. Large participants also benefit from the sales activities of smaller financial advisers and brokers. In some cases, large participants provide finance for products sold by smaller providers. Given the integrated nature of the financial services sector, it makes sense that all levels of the supply chain should contribute, including product issuers.

Second, prudential regulation of a firm (or particular activities of the firms) should not alone mean they avoid contributing to the scheme. Prudentially regulated firms such as insurers, most superannuation funds and banks all benefit from trust and confidence in the financial system as a whole. While there is less evidence of historical uncompensated loss, it is not beyond possibility that a prudentially regulated firm would collapse in the future or would incentivise smaller players to engage in high risk sales conduct. APRA does not take a zero-risk approach to prudential regulation.

More importantly, prudentially regulated firms do engage in unfair conduct, misconduct and conduct falling well short of community expectations. Recent AFCA statistics show that, of the 44,988 complaints received from its commencement on 1 November 2018 to 30 June 2019:

- 16,214 were against banks, including 2,872 for deposit-taking and payment systems;
- 9,287 were against general insurers; and
- 3,224 were against superannuation funds.⁸

If prudentially regulated firms are seen to be arguing for carve outs from the CSLR, people’s confidence and trust in the financial system as a whole—and all financial firms within it—is undermined. Low trust and confidence are not in the interests of prudentially regulated firms.

Q4. How should risk be assessed?

No comment.

Q5. Should the funding model assess risks at the individual financial firm level or at the financial service class level?

Risk based fees should be at an industry level, rather than the firm level. This would help to ensure that there are the right incentives to improve conduct across the industry. If particular firms or segments of an industry are engaging in risky conduct, then industry-based risk fees will incentivise the industry to reform as a whole. These improvements to the overall industry will ultimately reduce the need for consumers to call on the scheme, and therefore lower fees would need to be paid to the scheme over time. In the early stages of the CSLR, financial services, for the purposes of a risk-based model, can be grouped in broad classes, to reduce cost and complexity of the scheme. If there is evidence of particularly high-risk behaviour within any of these broad classes, the model can become more granular over time.

Q6. Should a risk- based funding model apply to all CSLR costs?

As noted above, the model should include a blend of risk-based fees and fixed (or non risk-based) administration fees.

Q7. To what extent should the funding model be based on a firm’s ability to pay?

We support some consideration of the firm’s ability to pay. We agree with the Ramsay Review that the funding model should not result in a substantial lessening of competition amongst financial firms, while ensuring all firms make an appropriate contribution.

There are many bigger players that have a much greater capacity to fund a CSLR, because of their market domination. Smaller firms cannot afford the same size levy as big corporations. However, these firms do have a higher risk of collapse and clients requiring access to the scheme.

We note that if, as we recommend above, the scheme has broad coverage, including large prudentially regulated firms, then the cost to smaller firms may be more affordable.

Q8. How should ability to pay be assessed?

No comment.

Q9. What are suitable universally available metrics to assess a firm’s ability to pay?

No comment.

Q10. How should the funding model address unexpected costs?

We strongly support the CSLR establishing a strong capital base. The capital base should aim to prevent uncompensated loss, rather than try to fund it afterwards through special levies. For large unexpected costs, such as if there is a serious pay-out or collapse, there may be a role for government to step in, which the community

⁸ Australian Financial Complaints Authority, AFCA Datacube, accessed 14 February 2020: <https://data.afca.org.au/at-a-glance>.

expects. However, establishing a large capital base and solid funding model should eliminate the need for government financial support for the scheme.

Consumers want and need to be paid in a timely way. The reality is that anyone needing to claim on a last resort scheme is already at the end of a long journey. The impacts of uncompensated loss on individuals and families, with flow on impacts for the community, Government and trust in financial firms, are well-understood.

Q11. Is it better to avoid levy volatility or funds being tied up in a capital base that may not be often used?

No comment.

Q12. If a CSLR capital base is to be established, what is a suitable minimum capital requirement?

Establishing a large capital base should be a priority and should be spread across the whole industry. Rigorous economic modelling is required to ensure the capital base is enough to fund potential losses across the industry.

13. If levies are to be collected after the CSLR becomes aware of unexpected additional costs, how will financial firms manage this?

No comment.

Q14. Should a maximum cap apply to the annual levies that can be imposed on participating financial firms?

No, there should not be a maximum cap applied to annual levies. This will inevitably lead to a maximum compensation cap. There are mechanisms to ensure that levies are sustainable and affordable over time. Firms will invariably exert pressure on whoever sets the cap to keep levies low, which could undermine the scheme's capital base and ability to pay out claims.

Q15. If a maximum cap is imposed, what is an appropriate metric for this cap (for example, gross revenue from covered financial services)?

No comment.

Q16. If a maximum cap is imposed, what should the maximum cap be?

No comment.

Q17. If a maximum cap is imposed, what mechanisms should the CSLR have to avoid going into deficit (for example, an ability to raise further levies from financial firms that are yet to reach the maximum cap and/or to further limit compensation so that expenditure is kept under the effective annual maximum for the scheme)?

If, contrary to our recommendation, a maximum cap is imposed, the CSLR should have mechanisms to raise additional levies to replenish the capital base to prevent a deficit. If compensation were to be limited, then a rationing mechanism based on financial hardship should be used to determine the amount of compensation awarded, or full compensation could be deferred until additional levies were sufficient to cover the shortfall.

Rather than raising levies or limiting compensation, we would prefer the CSLR establish and maintain sufficient capital base to prevent deficit.

Compensation to be paid

Q18. How should compensation limits be used by the CSLR to balance the interests of consumers and those funding the scheme?

As a general principle, a consumer should be able to recover their full loss as awarded by AFCA or by tribunal or court order. However, if a CSLR compensation cap is imposed, then it should be no less than the AFCA compensation cap and be indexed accordingly to increase and continue aligning over time.

This alignment will have many benefits. It will be clear for consumers and industry to understand. The CSLR should track AFCA limits over time, meaning one, rather than two, processes to increase limits.

The majority of AFCA claims are far below the compensation limits, and we understand that the average AFCA determination is around \$100,000.⁹ While some AFCA claims have unlimited compensation caps, such as guarantee disputes, the remedy is usually setting aside the guarantee, not compensation. Indeed, the compensation sub-limits for non-financial loss are woefully low—currently capped at only \$5,000 per claim.

Q19. If the CSLR compensation limits are to be lower than AFCA's claim limits, what limit would be appropriate?

There is no reason to set the CSLR limits lower than the AFCA claim limits. This would be against the recommendation of the Ramsay Review and would risk undermining community confidence in the scheme. We strongly oppose setting CSLR limits lower than AFCA claim limits.

If, contrary to our recommendation, the CSLR compensation limits are to be less than the AFCA limits, this should be set as a maximum dollar value (i.e. the maximum compensation paid is 80% of the AFCA limit or \$400,000 for consumer claim) not as a percentage of the compensation awarded (i.e. 80% of the \$X awarded in the AFCA determination).

It would be inappropriate and unfair for smaller claims to have only a percentage of a claim paid, particularly for the types of disputes that affect people experiencing vulnerability. Our clients have credit and debts matters that are very unlikely to hit the compensation limits of AFCA.

⁹ Statistic from Treasury staff at the CSLR Roundtable hosted in Sydney on 21 January 2020.

We refer to Carol's case study in our submission to the Ramsay EDR Review Issues paper.¹⁰

Carol's story

In early 2012, Carol (name changed) approached a 'rent-to-buy' caryard to trade in her old car and purchase a larger car. At the time, Carol was living in emergency accommodation and supporting three children. She had limited experience with complex transactions.

Due to misrepresentations by staff members, Carol believed that she was buying a car under finance. She traded-in her old vehicle as part of the deal. However, the FSP claimed that the agreement was for short-term rental only.

At the end of 2012, the FSP repossessed the new car. The FSP sold both her new car and her old car.

Carol lodged a dispute with FOS. In 2014, FOS made a determination in favour of Carol, finding that the FSP had engaged in misleading or deceptive conduct, irresponsible lending and inappropriate debt collection. Carol was awarded over \$10,000 in compensation.

The FSP did not pay Carol. Having lost both the new and old cars, Carol was left with no car and no compensation.

Source: Consumer Action, as at 10 October 2016

There is no reason in equity, or for the sustainability of the CSLR, for Carol to only receive 80% of her claim, saving the CSLR only \$2,000. Carol should not have to go without her additional \$2,000 so that the scheme can fund higher value claims.

Q20. How should the CSLR manage claims associated with large unexpected failures?

A CSLR with a sufficient capital base should be able to withstand most shocks. However, the CSLR should have the capacity to raise special levies to respond to large unexpected failures. In extreme cases, such as where a series of large firms collapse, there may be a role for government to step in, which would align with community standards and expectations. The ability for large calls on a CSLR following both misconduct and a multi-firm collapse would usually suggest a failure of government, laws and regulation.

Q21. Should the CSLR be able to spread compensation payments over time and, if so, what would an appropriate maximum time period be?

The scheme should pay claimants as soon as possible after a claim is made in a lump sum. If, contrary to our recommendation, payments are to be made over time:

- the maximum time period should be three years; and
- payments should be prioritised to people in hardship. This will help to mitigate further impacts from financial hardship, which can include home repossession, insolvency, mental and physical ill-health, and relationship breakdown.

¹⁰ Joint consumer submission to The Treasury, *EDR Review – Issues Paper*, 10 October 2016, p 74: <https://consumeraction.org.au/edr-review/>.

Q22. Should the CSLR be able to impose an additional compensation limit to unpaid determinations associated with a single specific large failure and, if so, what would an appropriate limit be?

No. This should be managed by establishing a sufficient capital base and requiring special levies, not by capping compensation.

The Discussion Paper suggests that 'compensation related to the specific loss event could be capped at \$50 million, with the result that claimants impacted by that loss event may receive less than the amount awarded if the aggregate value of claims exceeded \$50 million.' Limiting compensation in this way is unfair. This would also slow down the compensation process because all similar claims would need to be finalised, which could take many months, if not years, before the percentage that each claimant is to receive is set. Anyone bringing their claim early would face delays and could miss out if others have a claim, which could be many people in the event of a large firm failing.

Managing scheme evolution

Q23. How should compensation for legal and professional costs be limited?

AFCA will usually be the preferable forum for consumers' disputes against financial firms because AFCA is accessible, free and the consumer does not have to incur legal costs in obtaining a remedy. However, there will be occasions where courts are appropriate, including where it is an untested area of law, it's outside AFCA's monetary limits, or AFCA does not investigate.

However, in the interest of establishing a sustainable initial CSLR, legal and professional costs could be capped at AFCA's limits for non-financial loss, currently \$5,000.¹¹ This could be reviewed as part of the further work proposed on inclusion of court and tribunal awards.

Q24. What aspects of the design and operation of the CSLR should be determined by the CSLR and what aspects should be prescribed in legislation?

We strongly support giving the CSLR flexibility provided the governance model is consistent with the recommendations of the Ramsay Review. We support flexibility and responsiveness, and do not consider that operational detail needs to be prescribed in legislation. However, the following features would be appropriate for a legislative underpinning:

- minimum coverage of the scheme;
- the ability for the CSLR to increase its capital base and raise annual levies and special levies from financial firms;
- obligations on firms to pay levies and comply with the CSLR;
- governance of the scheme, including equal consumer representation on the board; and
- ASIC oversight of the CSLR.

The CSLR must have independence from AFCA, in the event that AFCA were to administer the CSLR. The CSLR should be clearly separated from AFCA's decision making, with appropriate governance, accountability and transparency measures to ensure the independence of the CSLR.

¹¹ Operational Guidelines effective 1 October 2019, pages 187-189.

Outstanding Ramsay Review recommendations on CSLR design

We are concerned that several aspects of Recommendation 3 of the Ramsay Review Supplementary Final Report¹² were not included in the Discussion Paper. Recommendation 3 covers critical design elements for the CSLR. These recommended design elements should be progressed by Treasury as a matter of urgency, including in exposure draft legislation where appropriate.

Issue	Recommendation #	Recommendation
Licensing obligations	Supplementary Final Report, Recommendation 3	Financial firms providing the types of financial services covered by a CSLR should be required to be members and contribute to the funding of a CSLR as a condition of licensing
ASIC oversight	Supplementary Final Report, Recommendation 3	ASIC should have oversight of a CSLR to ensure it is fulfilling its objectives, similar to the role envisaged for ASIC in respect of AFCA. This will require ASIC to have a general directions power to allow it to compel a CSLR to meet its regulatory and legislative requirements
Governance model	Supplementary Final Report, Recommendation 3	A CSLR should be governed by an independent board with an independent chair and equal numbers of directors with industry and consumer backgrounds, consistent with the AFCA model'
Independence from AFCA	Supplementary Final Report, Recommendation 3	A CSLR should operate independently of AFCA; however, these bodies will need to work together
Functions and powers of a CSLR	Supplementary Final Report, Recommendation 3	A CSLR should not independently reassess the merits of claims which it receives
Debt management firms	Final Report, Recommendation 10	Debt management firms should be required to be members of the single EDR body. Further work should be undertaken to determine the most appropriate mechanism by which to impose this requirement.

For further views on elements of the design of a CSLR, please see the joint consumer submission to the Ramsay Review Supplementary Issues Paper.¹³

¹² <https://treasury.gov.au/sites/default/files/2019-03/Supplementary-Final-Report-2.pdf>.

¹³ Joint submission to The Treasury, *EDR Review – Supplementary Issues Paper*, 4 July 2017, <https://consumeraction.org.au/edr-review-supplementary-issues-paper/>.

Contact details

Please contact Senior Policy Officer **Cat Newton** at **Consumer Action Law Centre** on 03 9670 5088 or at cat@consumeraction.org.au if you have any questions about this submission.

Yours Sincerely,



Gerard Brody | CEO
CONSUMER ACTION LAW CENTRE



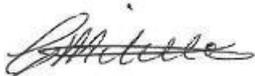
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APPENDIX A – ABOUT THE CONTRIBUTORS

Consumer Action Law Centre

Consumer Action is an independent, not-for profit consumer organisation with deep expertise in consumer and consumer credit laws, policy and direct knowledge of people's experience of modern markets. We work for a just marketplace, where people have power and business plays fair. We make life easier for people experiencing vulnerability and disadvantage in Australia, through financial counselling, legal advice, legal representation, policy work, campaigns, outreach, community engagement and more. Based in Melbourne, our direct services assist Victorians and our advocacy supports a just marketplace for all Australians.

Consumer Credit Legal Service (WA) Inc

Consumer Credit Legal Service (WA) is a not-for-profit charitable organisation which provides legal advice and representation to consumers in WA in the areas of banking and finance, and consumer law. We strengthen the consumer voice in WA by advocating for, and educating people about, consumer and financial, rights and responsibilities. In the 2018/2019 financial year, we represented over 100 clients in their disputes, and participated in over 40 law reform activities.

CHOICE

Set up by consumers for consumers, CHOICE is the consumer advocate that provides Australians with information and advice, free from commercial bias. CHOICE fights to hold industry and government accountable and achieve real change on the issues that matter most.

Financial Counselling Australia

FCA is the peak body for financial counsellors in Australia. We are the voice for the financial counselling profession and provide support to financial counsellors including by sharing information and providing training and resources. We also advocate on behalf of the clients of financial counsellors for a fairer marketplace.

Financial Rights Legal Centre

Financial Rights is a community legal centre that specialises in helping consumers understand and enforce their financial rights, especially low income and otherwise marginalised or vulnerable consumers. We provide free and independent financial counselling, legal advice and representation to individuals about a broad range of financial issues. Financial Rights operates the National Debt Helpline, which helps NSW consumers experiencing financial difficulties. We also operate the Insurance Law Service which provides advice nationally to consumers about insurance claims and debts to insurance companies, and the Mob Strong Debt Help services which assist Aboriginal and Torres Strait Islander Peoples with credit, debt and insurance matters.