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The Treasury  
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**RE: Consultation Paper on Enhancing the effectiveness of financial service professional indemnity insurance**

The Financial Services Council (FSC) welcomes the opportunity to provide a submission to Treasury’s Consultation Paper on Enhancing the effectiveness of financial service professional indemnity insurance as part of the Compensation Scheme of Last Resort (CSLR) post-implementation review.

The consultation seeks feedback on the current operation of professional indemnity insurance (PII) and opportunities to enhance the effectiveness of PII in the context of the CSLR. It asserts that a “more robust ‘first line of defence’ to fund consumer compensation could support the broader sustainability and purpose of the CSLR.” However, it also considers that any potential changes “must also be viewed in the broader context of the supply, quality, and pricing of PI insurance and any related regulatory or business costs for licensees.”<sup>1</sup>

The FSC strongly supports the policy objective of having a sustainable CSLR. We have long maintained the view that the CSLR is not sustainable in its present form. It is no longer acting as a scheme that is truly last resort and we have proposed a range of reforms to address its deficiencies. FSC also recognises the importance of having a well-functioning PII market as an initial defence for consumer compensation.

The FSC is open to the potential for enhancements to PII in the context of addressing CSLR costs. Given the risk that reforms may impose additional costs on compliant licensees, however, and the potential impact to the stability of the market, we encourage Treasury to consider an evidenced-based analysis of whether, and how much, PII inadequacy is driving CSLR costs. This would then allow proposed reforms to be assessed based on how effective they would be in alleviating the costs of the scheme.

**The context of the consultation**

This consultation comes amid a growing frequency of what were once considered “black swan” events, such as Dixon Advisory, United Global Capital, and more recently the Shield and First Guardian collapses. These incidents demonstrate how easily some entities can phoenix to avoid meeting their liabilities, shifting the cost burden to the CSLR and, ultimately, to other market participants. The failures of Shield and First Guardian alone have resulted in around 12,000 investors losing more than \$1 billion in savings. They involved different parts of the financial services value chain, which has raised complex policy issues around identifying the extent to which weaknesses along different parts of the value chain increased the risk of mis-

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<sup>1</sup> Treasury [Consultation paper](#), page 2

selling and the need for compensation. The FSC has developed policy reform suggestions for government addressing the various parts of the ecosystem that contributed to consumer losses, as well as finalising our investment governance principles for superannuation platforms to strengthen governance standards for the selection and monitoring of investment products.

It is difficult to see how PII can meaningfully address such significant failures without consideration of other reforms which must do the heavy lifting to address root causes of the losses. It is in this context that the FSC provides its submission on potential enhancements to PII, along with the caution that the role of PII in addressing failures cannot be viewed as the primary solution to address consumer protection gaps and CSLR sustainability.

The FSC understands a further consultation on CSLR reform is likely to be released shortly. We look forward to engaging further with this process to consider broader, structural changes to address the costs of the CSLR.

## About the Financial Services Council

The FSC is a peak body which sets mandatory Standards and develops policy for more than 100 member companies in one of Australia's largest industry sectors, financial services. Our Full Members represent Australia's retail and wholesale funds management businesses, superannuation funds, and financial advice licensees.

The financial services industry is responsible for investing more than \$3 trillion on behalf of over 15.6 million Australians. The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange and is one of the largest pools of managed funds in the world.

## Summary of Recommendations

1. Before considering the adoption of material intervention into the regulatory model or the structure of policies, and in the absence of other reforms to address the cause of recent collapses, Treasury should undertake further analysis on the drivers of the loss events leading to unpaid determinations. This could include working with AFCA, the CSLR Operator, and ASIC to assess whether potential changes to PII cover would have a material impact on the volume and cost of claims.
2. To avoid market destabilisation, any future reforms to PII should be carefully calibrated to market capacity and the likely response by insurers.
3. Introduce stronger ongoing annual reporting requirements including more granular data reported through to the regulator. This would place greater emphasis on licensees' responsibility to maintain adequate ongoing PII coverage.
4. Oversight of the existence and adequacy of PII coverage should be carried out as part of an AFS licensee's annual audit requirements, which already assesses minimum financial requirements. To ensure ASIC has appropriate visibility ASFLs could be required to supply a current certificate of insurance each year as part of this process.
5. Consideration should be given to whether, as part of the enhanced the data collection

discussed above, ASIC could include a requirement for licensees to justify why their PII arrangements provide adequate coverage where there has been a material change in their circumstance based on certain metrics or indicators.

6. Review minimum required coverage levels with a view to introducing an appropriate increase or regular indexation of current levels to reflect today's business, and claims, values.
7. Consider the feasibility of introducing a requirement for licensees to maintain run-off cover to address claims made that reflected risks priced during the life of the policy. This could reflect a limited time during which run-off cover would be required following the end of the policy.
8. Consider introducing an obligation preventing external administrators from being able to cancel the PII cover for a period of time to ensure the opportunity to make a claim during this period remains available to the administrator.
9. The Government should consider strengthening the CSLR's subrogation rights, by imposing an obligation to use reasonable endeavours (i.e. not solely providing the CSLR operator a right) to pursue recovery. Consideration should also be given to imposing a legal requirement for financial services providers to provide a copy of their professional indemnity insurance policy to the scheme operator where the financial services providers have unpaid AFCA claims.
10. Treasury to investigate the possibility of increasing the priority given to the CSLR operator's creditor claims in liquidation or other means of streamlining subrogation rights to ensure the CSLR operator's claims are not prejudiced by statutory processes.
11. ASIC should be encouraged to exercise its power under section 915H of the Corporations Act to require an AFS licensee to hold PI insurance for the same length of time as ASIC requires the licensee to maintain AFCA membership after its licence is cancelled, and at a minimum no less than 12 months after the cancellation of their AFS licence.

## Introduction

While the FSC supports the policy intent of the CSLR, unfortunately its present structural flaws are causing the schemes costs to blow out rapidly. This is evidenced by:

- the Minister’s decision to address the 2025-26 CSLR funding shortfall attributable to the financial advice sub-sector by imposing a \$47.3 million levy on all retail facing sub-sectors;<sup>2</sup> and
- the release of an Initial Estimate for FY2027 by the scheme, calculated at \$137.5m, including an estimate of \$126.9m for the personal financial advice sub-sector (well in excess of the \$20m sub-sector cap).<sup>3</sup>

It is on this basis that the FSC has strongly supported the Government’s current post-implementation review of the CSLR to ensure the scheme can achieve a sustainable footing.

In response to the initial consultation (February 2025), and on an ongoing basis since that time, the FSC has argued for meaningful structural reform of the scheme including:

- addressing excluding hypothetical capital gains from being compensable under the CSLR:
- requiring AFCA to urgently and significantly reduce the administrative costs reimbursed by the CSLR:
- enhancing and enforcing the CSLR operator’s subrogation rights and powers, including in relation to backdated claims; and,
- providing a one-off Government funding injection to meet the original expectation that Dixon claims would be jointly funded by Government and the pre-CSLR levy.

The FSC has continued to work with all sectors of the financial services industry to achieve consensus on additional proposals to address the scheme and expect this to form part of future submissions, including a proposal for the scheme to be means tested.

A backdrop to this round of consultation is the Shield and First Guardian collapses which are likely to put significant additional pressures on the scheme as cases flow through the compensation process. The FSC believes its proposals can address in a targeted way potential governance and consumer protection gaps in the various parts of ecosystem which contributed to the losses.

We are in the process of finalising our investment governance principles for superannuation platforms to strengthen governance standards around how investment products are selected and monitored on an ongoing basis. And we have proposed possible initiatives relating to the increased regulation of lead generation and anti-hawking rules, strengthening managed investment scheme regulation, encouraging best practice for research houses and the

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<sup>2</sup> Assistant Treasurer’s Media Release, 10 December 2025 [Consumer protection and stability in the finance sector](#)

<sup>3</sup> CSLR Operator’s Media Release, 17 November 2025 [Compensation Scheme of Last Resort released FY2027 initial levy estimate](#)

consideration of increasing licensing standards, financial requirements and regulatory supervision across all advice licensees (to be released as part of our White Paper on advice licensing).

This is to say, whilst PII is an important element in the consumer protection framework, it is not designed to address the drivers of the failures and consumer losses we have seen as part of recent collapses, and which will continue to contribute to CSLR costs if the status quo remains. Targeted and well considered enhancements to PII in this market may have the effect of strengthening licensee coverage and increasing recovery from insurers, however, they are unlikely to be able to meaningfully reduce CSLR costs caused by such significant system risks. Asking PII to play too great a role may in fact risk destabilising what is currently a relatively well functioning market.

Without further evidence, other reforms are likely to be better able to materially reduce consumer loss and costs in the system. The FSC makes recommendations and responds to the consultation with this in mind.

### Requirements for PII (effectiveness of existing regulatory model)

The existing regulatory model, incorporating legislative requirements and regulatory guidance (ASIC's RG 126) are non-prescriptive and generally offer adequate flexibility for licensees to implement arrangements appropriate for their business. FSC members consider that this relatively flexible approach also permits insurers sufficient scope to develop products, and product features, to suit the market.

While the FSC is supportive of targeted reforms to address appropriate enhancements to the PII regulatory framework, by itself this is unlikely to shift outcomes materially relating to significant loss events. Reforms may best be viewed through the lens of optimising PII for a normal claims distribution environment.

We would be cautious about questioning the effectiveness of the model, on the whole, in reducing the risk that consumers are not compensated when a licensee has insufficient resources to meet claims. In the face of the significant unpaid determinations currently before the CSLR the existing PII framework is likely to be structurally limited in responding where losses exceed commercially realistic PII limits. As the consultation rightly points out "if PII requirements ask insurers to take on risks that are too large or complex to price this may lead to coverage withdrawal, and reduced competition and access."<sup>4</sup>

Before considering the adoption of material intervention into the regulatory model or the structure of policies, and in the absence of other reforms to address the cause of recent collapses, Treasury should undertake further analysis on the drivers of the loss events leading to unpaid determinations. This should clarify the relative contribution of PII effectiveness issues including, for example - absence of cover, underinsurance, exclusions, claims not pursued during administration.

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<sup>4</sup> Treasury [Consultation paper](#), page 15

### **RECOMMENDATION 1**

Before considering the adoption of material intervention into the regulatory model or the structure of policies, and in the absence of other reforms to address the cause of recent collapses, Treasury should undertake further analysis on the drivers of the loss events leading to unpaid determinations. This could include working with AFCA, the CSLR Operator, and ASIC, to assess whether potential changes to PII cover would have a material impact on the volume and cost of claims.

### **RECOMMENDATION 2**

To avoid market destabilisation, any future reforms to PII should be carefully calibrated to market capacity and the likely response by insurers.

## Regulatory oversight

FSC members report that the current approach to ASIC's PII oversight for AFS licensees is largely inadequate in ensuring market participants are meeting their licensing requirements. This is especially the case with respect to the ongoing monitoring of the adequacy of licensees' PII cover where a more active role by the regulator may be appropriate.

The existing *ongoing* oversight over PII arrangements, through which AFS licensees self-report on the status of their PII cover through their annual financial statement returns is sub-optimal. This level of reporting does not provide the appropriate level of data for the regulator to appropriately assess and monitor the continued existence and adequacy of a licensee's policy and coverage. We are concerned that, with reliance on upfront compliance at initial licensing, some licensees may adopt a set and forget approach, either allowing their coverage to lapse following initial licensing, or not reviewing their arrangements to ensure they maintain adequate coverage. This may also lead to poor understanding or prioritisation of coverage amongst practitioners. Survey data completed by CoreData for the FSC revealed that almost half of practitioners don't know what type of PI claim coverage they have at present.<sup>5</sup>

Inadequate or non-existent coverage by some licensees poses a risk (and cost) to the entire sector. The FSC considers that stronger ongoing reporting requirements including more granular data reported through to the regulator would place greater emphasis on licensees' responsibility to maintain adequate ongoing PII coverage.

In place of the financial statement return we suggest a review of the existence and adequacy of PII coverage should be undertaken as part of the AFS licensee's annual audit requirements, which already assesses minimum financial requirements. To ensure ASIC has appropriate visibility ASFLs could be required to supply a current certificate of insurance each year as part of this process. Alternatively, or in addition to this, an enhanced structured data framework could be introduced requiring licensees to provide details of: policy adequacy (limits, excess levels); coverage gaps (exclusions, carve outs, product specific limitations), claims data

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<sup>5</sup> FSC Green Paper, [The Value and Future of Advice Licensing](#), page 25

(lodged and outstanding and declined claims in the period); and policy renewal history.

FSC members have suggested that with the provision of additional data on an ongoing basis ASIC could undertake a risk-based approach to assessing which licensees do not meet adequate coverage requirements and requesting them to rectify their arrangements. To enhance the data collection discussed above ASIC could include a requirement for licensees to justify why their PII arrangements provide adequate coverage where there has been a material change in their circumstance based on certain metrics or indicators. For example – a threshold based on increases in revenue over the period, a change in products being advised on, a material increase in successful AFCA determinations against the entity, a material increase in internal complaints data, or increase in reportable situations.

Additional, more granular data collection and a risk-based approach to the assessment of adequacy is likely to require additional ASIC resourcing. FSC members are open to discussing how any extra funding for the regulator could be delivered. Should an industry funding mechanism or contribution be considered, any contribution by licensees should be applied and calibrated to ensure appropriate accountability for the risk to the system presented by licensees having inadequate coverage.

### **RECOMMENDATION 3**

Introduce stronger ongoing annual reporting requirements including more granular data reported through to the regulator. This would place greater emphasis on licensees' responsibility to maintain adequate ongoing PII coverage.

### **RECOMMENDATION 4**

Oversight of the existence and adequacy of PII coverage should be carried out as part of an AFS licensee's annual audit requirements. To ensure ASIC has appropriate visibility ASFLs could be required to supply a current certificate of insurance each year as part of this process.

### **RECOMMENDATION 5**

Consideration should be given to whether, as part of the enhanced data collection discussed above ASIC could include a requirement for licensees to justify why their PII arrangements provide adequate coverage where there has been a material change in their circumstance based on certain metrics or indicators (as suggested above).

## **PII Market**

The description of the PII market presented in the consultation paper is broadly consistent with the experience of FSC members, who represent large financial advice businesses in the sector. These businesses have experienced improved availability of cover and more stability in pricing in recent years, reflecting a relatively soft market. New entrants and returning Lloyd's syndicates have boosted competition in the market. This has not always been the case, with increased regulation and heightened perception of risk immediately following the *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry*

creating an environment of higher pricing and scarcity of cover, with some insurers leaving the market at that time. Our members observe that the market appears to be recovering from that post-Royal Commission period. However, the market can and will vary over time.

At present most financial advice licensees can obtain appropriate cover on commercial terms. Where there are constraints (for example - higher premiums and excesses or lack of access to cover for certain products or actions) this is generally for higher risk cohorts and this is likely to be the result of risk-based underwriting, and generally consistent with a well-functioning market. With regulatory uncertainty or the expectation that PII expands to cover large scale compensation events, as we saw post-Royal Commission, the market could tighten leading to less availability and certainty of cover. Insurers look for a well-regulated sector where insured entities manage their risks well and where the potential for systemic issues is low.

#### *Representative networks*

Well run financial advice businesses with representative networks will have strong monitoring and supervision and as such will drive claims experience down and this will lower cost. They will often have the benefits of scale, lowering costs and increasing efficiency, with the flexibility to manage aggregate premium costs through the agreements they have with representatives in the network. Overall, we see these features as positive to the PII market.

#### *Industry bodies*

The FSC appreciates the reference the consultation paper makes to arrangements which exist in other professions. Based on our observations of the market as it currently stands, and potential enhancements to the regulatory and supervision model that applies, the role for industry bodies may be limited.

### **PII Policies**

As described above, for lower risk financial advice businesses, availability of appropriate cover has improved and we are generally cautious about measures that would intervene in the market to mandate particular features of cover (for example – mandating policies without exclusions). Where insurers encounter risks they cannot easily price there is the risk that market stability and pricing will suffer. Again, where access to cost effective and comprehensive cover is not currently possible this is largely a function of risk-based underwriting.

However, FSC members consider there is potential for change in certain areas without intervening heavily in the market.

#### *Minimum requirements*

ASIC RG 126 states that to be adequate a PI insurance policy must generally have a limit of at least \$2 million for any one claim and in the aggregate for AFS licensees with total revenue of \$2 million or less. Where revenue is greater than \$2 million, minimum cover should be appropriately equal to or expected revenue (up to a maximum of \$20 million).<sup>6</sup>

These minimum coverage levels have not been updated since 2007. While changes to these

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<sup>6</sup> ASIC Regulatory Guide RG 126; page 15

minimum limits are unlikely to materially affect outcomes in significant loss events such as those currently before the CSLR given the limits of insurable cover, reviewing the limits in light of normal market conditions may be appropriate.

A further issue with cover limits is remediation events that affect multiple customers are often considered a 'single claim', depending on PII terms, and therefore the coverage limit would only cover a (potentially small) portion of the remediation, leaving the balance to be funded by the AFS licensee (or not covered at all if the AFSL does not have sufficient cashflow/capital to cover). As an example, the misconduct of two advisers that resulted in compensation of approximately \$50m payable to hundreds of customers is considered a 'single claim', meaning PI cover is practically irrelevant, unless the AFSL has a very high limit.

#### *Run-off cover*

In consultation with its members, and the broader financial advice sector through our Advice Licensing *Green Paper* process, there was consistent feedback that requiring automatic run-off cover should be considered for the Australian market. That is, cover should be required for claims made after the insurance policy has ended that have arisen from the acts or omissions of the insured during the period of insurance.

Ideally run-off cover should be widely available but given the market for PII is global, we are reliant on what is available to be offered at affordable premiums to Australian insured clients. We encourage government and ASIC to investigate with insurers the feasibility of making run-off cover available as a minimum requirement for licensees. It is reasonable for insurers to exclude cover for future activities, however where they were on risk and priced to cover an activity at a particular time, they should be expected to provide run off cover.

#### **RECOMMENDATION 6**

Review minimum required coverage levels with a view to introducing an appropriate increase or regular indexation of current levels to reflect today's business, and claims, values.

#### **RECOMMENDATION 7**

Consider the feasibility of introducing a requirement for licensees to maintain run-off cover to address claims made that reflected risks priced during the life of the policy. This could reflect a limited time during which run-off cover would be required following the end of the policy.

### **PII and external administration**

In cases of administration, PII coverage will either be cancelled, or administrators will be unlikely to make a claim on a current policy given the costs incurred in making and progressing the claim. For low value claims which sit below excesses this may seem a practical decision, however we would caution that where there appears to be a trend in the market it may warrant further investigation to ensure market distortions do not emerge.

Administrators may be reluctant to maintain a current PII policy for the relevant entity, or make a claim on a current policy. Preventing external administrators from being able to cancel the PII cover for a period of time may at least ensure, where possible, the opportunity to make a claim

during this period remains available for consideration by the administrator.

#### *CSLR and subrogation rights*

The FSC considers it important for the CSLR operator to be obliged to thoroughly assess whether funds may be recovered through its subrogation powers. This should be framed as a duty to use reasonable endeavours to achieve cost recovery, rather than a right to pursue it. To facilitate the exercise of these rights, licensees with unpaid AFCA claims should also be legally required to disclose a copy of their professional indemnity insurance policy to the CSLR operator. Alternatively, ASIC should be authorised to provide the CSLR operator with the latest copy of a PI insurance policy provided to them during the AFS licence registration/renewal process.

Where there may be practical and legal limitations on the CSLR operator's subrogation rights and powers the FSC is supportive of amendments to remedy legal issues which we understand the operator has identified with the subrogation powers conferred upon it. The Consultation Paper identifies certain Australian jurisdictions where legislation allows a third party to take court proceedings against an insurer directly to recover a claim. On the basis of expanding the CSLR operator's subrogation rights the FSC supports expanding this legislation to all States. Ideally, however, the CSLR operator would have standing to pursue a claim against an insurer outside of the court application process similar to insolvency practitioners.

#### *CSLR operator's insolvency status*

The FSC notes that under section 1069A of the Corporations Act, the CSLR operator may only exercise subrogated rights once compensation has been paid. This can result in substantial delays, many of which are outside of the CSLR operator's control and may prejudice the CSLR operator's standing in any insolvency.

For example, the CSLR operator may, depending on the relevant proof of debts cut-off date, be forced to file out of time and, accordingly, receive a lower level of priority (or share of the insolvency assets) over the remaining assets of a Chapter 5 body corporate than otherwise would have been the case for an unsecured creditor in its shoes. This would place greater, unnecessary pressure on other CSLR funding sources. The FSC recommends Treasury investigate the merits of either giving CSLR operator debts priority unsecured creditor status or another means of streamlining the operation of subrogation rights.

The FSC notes that while CSLR operator claims should increase in priority, it should not supersede existing PI insurance claims. Maintaining PI insurance claim priority is crucial as it represents the first line of protection and primary risk management tool.

#### *Maintaining PII cover in line with AFCA membership*

ASIC should be encouraged to exercise its power under section 915H of the Corporations Act to require a licensee to hold PI insurance for the same length of time as ASIC requires the licensee to maintain AFCA membership after its licence is cancelled. ASIC typically requires an AFS licensee to maintain AFCA membership for 12 months after the AFS licence cancellation to allow clients a reasonable time to bring a complaint. ASIC should require licensees to maintain their PI insurance until their AFCA membership is ceased. This should also make allowance for

AFCA proactively deciding to expel the licensee, in which case the PI insurance should still be maintained for the balance of the 12 months after the AFS licence cancellation. This will strengthen the likelihood of insurance cover being available to meet the costs of any AFCA determination and reduce reliance on the CSLR.

**RECOMMENDATION 8**

Consider introducing an obligation preventing external administrators from being able to cancel the PII cover for a period of time to ensure the opportunity to make a claim during this period remains available to the administrator.

**RECOMMENDATION 9**

The Government should consider strengthening the CSLR's subrogation rights, by imposing an obligation to use reasonable endeavours (i.e. not solely providing the CSLR operator a right) to pursue recovery. Consideration should also be given to imposing a legal requirement for financial services providers to provide a copy of their professional indemnity insurance policy to the scheme operator where the financial services providers have unpaid AFCA claims.

**RECOMMENDATION 10**

Treasury to investigate the possibility of increasing the priority given to the CSLR operator's creditor claims in liquidation or other means of streamlining subrogation rights to ensure the CSLR operator's claims are not prejudiced by statutory processes.

**RECOMMENDATION 11**

ASIC should be encouraged to exercise its power under section 915H of the Corporations Act to require an AFS licensee to hold PI insurance for the same length of time as ASIC requires the licensee to maintain AFCA membership after its licence is cancelled, and at a minimum no less than 12 months after the cancellation of their AFS licence.

The FSC welcomes the opportunity to further discuss the matters outlined in this submission. To arrange a meeting, please contact me on 0450 630 247 or email [hrussell@fsc.org.au](mailto:hrussell@fsc.org.au)

Yours sincerely

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