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The Treasury
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Compensation Scheme of Last Resort (CSLR): Application of the waterfall framework for the 2026-27 special levy

The Super Members Council welcomes the opportunity to provide feedback to the application of the CSLR waterfall framework for the 2026-27 special levy.

Events like the devastating collapses of Shield and First Guardian must never happen again. Almost 12,000 Australians lost an estimated $1.2 billion of their life savings through a chain of misconduct and failed safeguards. These were not isolated events. The largest costs borne by the CSLR have repeatedly originated from the same business model: firms that channelled clients into related-party or high-risk managed investment schemes. Dixon Advisory, United Global Capital, and Shield and First Guardian together account for $147 million, or 87 per cent, of the 2026-27 compensation costs.

The CSLR waterfall is intended to allocate excess costs once the annual levy cap has been reached. **Although the Government describes this mechanism as risk-based, put plainly: it is not.**

The proposed 2026-27 allocation does not distribute the projected excess compensation bill according to risk. It weakens the link between where unpaid compensation costs arise and who pays for them, does not transparently assess the activities that caused or enabled the losses, and transfers most of the funding shortfall onto Tier 3.

SMC strongly supports the existence of the CSLR and the need to ensure the scheme's financial sustainability. We also recognise the growing cost burden on thousands of reputable advice firms who did not cause the losses currently working their way through the scheme. That is why we have consistently called on Government to adopt a comprehensive harm prevention and risk-based funding model for the CSLR which:

- Firstly, prevents the occurrence of these types of catastrophic consumer harms;
- Secondly, empowers regulators to order recovery of the full costs from the individuals and firms responsible for harm to their own members/consumers in the first instance and
- Lastly, apportions the cost of a much smaller residual unpaid compensation funding shortfall via a risk-based formula reflective of the sub-sectors from which actual unpaid compensation orders arose.

Instead, this consultation paper shifts responsibility away from the sectors most closely connected to the losses and further onto those with none. Compared with Treasury's own April example, the personal advice sector's Tier 1 contribution is proposed to halve from $20 million to $10 million - and connected-sector recovery would fall from $87 million to $40 million. Tier 3 levies are proposed to rise from $112.4 million to $120.3 million, even though the total overall levy is almost $50 million smaller. Applying the April settings to the current levy, super fund members were projected to pay $16.5 million via their trustees; under the proposals in this consultation paper, they would pay $23.8 million.

The result of the Government's latest proposal would be to force everyday Australians who are members of safe, mainstream super funds – including most of the nation's lowest-paid workers - to pay a compensation bill for failures arising in unrelated high-risk financial services. **A credible CSLR funding model must be genuinely risk-based.** In a genuinely risk-based model, levy costs would sit most closely with the sub-sectors from which these unpaid compensation orders arise and where entities are best placed to prevent or mitigate consumer harm. A genuine risk-based model would not push such a large proportion of the costs onto millions of low-income everyday Australians who choose the safeguards and protections of the mainstream super system.

SMC cautions against the Government spreading such losses across the broader financial system without applying a proper risk-based framework. Tiers 1 and 2 should allocate costs according to proximity and connection to the underlying harm. Tier 3 should operate only as a genuine residual backstop once those sources have been fully and appropriately exhausted. This latest proposal does not maintain that distinction and instead moves too quickly to broad cost-spreading.

Treasury has not explained why it now proposes a $10 million Tier 1 special levy contribution from personal advice when the waterfall framework permits up to $20 million.

It has also not published sufficient evidence to justify treating historically different platform and master trust activities identically. In addition, it now proposes to allocate 71 per cent of the levy through Tier 3 based on everyday regulatory effort rather than consumer-harm risk. Treasury should redesign this allocation, so liability more closely tracks to risk levels to ensure super fund members do not become the default payers for misconduct.

SMC's recommendations apply one principle throughout: the CSLR should allocate costs according to proximity to consumer harm and capacity to prevent or mitigate that harm, rather than shifting losses onto millions of Australians with modest amounts of super.

About the Super Members Council

We are a strong voice advocating for the interests of more than 12.5 million Australians who have over $1.9 trillion in retirement savings managed by profit-to-member super funds. Our purpose is to protect and advance the interests of those millions of super fund members throughout their lives, advocating on their behalf to ensure super policy is stable, effective, and equitable. We produce rigorous research and analysis and work with Parliamentarians and policy makers across the full breadth of Parliament.

SMC recommends Treasury should:

1) **Justify the Tier 1 amount.** Consider the full $20 million Tier 1 special levy contribution to personal advice in 2026-27, or publish the rationale, evidence and viability assessment supporting the proposed $10 million contribution.
2) **Not presume platform and master trust activity are equivalent.** Assess them separately and publish the evidence for any proposed identical CSLR treatment, given platform activity was part of the pathway to the Shield and First Guardian losses.
3) **Publish a connection framework.** Before the final determination, define substantive and facilitative involvement, the evidence standard, and the treatment of distribution, platform and administration functions. Publish the assessment for every activity considered.
4) **Reassess platform activity on the evidence.** Apply the published framework to Shield and First Guardian, considering actuarial evidence, reimbursements, regulatory findings and the obligations applying to platform and master trust activities.
5) **Carry forward before spreading.** Carry forward connected costs above the Tier 1 and Tier 2 caps to the same sub-sectors in later levy periods before any amount is spread through Tier 3.
6) **Recover before spreading.** Require the CSLR operator's expanded recovery powers to be used against connected parties before costs pass to Tier 3. Credit recoveries should flow first to Tier 3 payers.
7) **Replace supervisory intensity with a genuine Tier 3 risk measure.** Allocate costs by responsibility for harm and capacity to mitigate it – not by routine regulatory engagement. Recognise ORFR and Part 23 protections, the pass-through to members, and the case for removing APRA-regulated profit-to-member funds from the levy base.
8) **Complete the base and the evidence.** Implement SMSF contributions without delay. Publish revised sub-sector allocations and within-sub-sector concentration analysis before the Minister's final determination.

Question 1 - The waterfall principle: liability must follow responsibility

SMC supports improving the predictability and fairness of CSLR special levies. Costs should, as far as reasonably possible, be borne by sectors most closely connected to the losses. As SMC noted in its April 2026 submission, a waterfall addresses the consequences of weaknesses in the scheme rather than their causes. It must be accompanied by much stronger prevention, accountability and recovery, and must not make unconnected sectors the default residual payers.

The proposed waterfall contains structural flaws that weaken the price signal it is intended to create. First, the Tier 1 and Tier 2 caps limit what the sectors most closely connected to a failure can ever be required to pay, regardless of the scale or concentration of the harm. Once those caps are reached, additional costs are transferred to Tier 3 contributors that may have had no role in causing or enabling the loss. This weakens incentives for the sectors generating the risk to prevent and manage the risk. Connected firms and sectors are insulated from the full consequences of the risks generated by their business models, while unrelated sectors become the default source of funding. That result is difficult to reconcile with the April consultation paper's claim that the waterfall would provide a price signal to improve risk management and conduct.

Second, the framework does not require connected costs above the Tier 1 and Tier 2 caps to be carried forward and recovered from the same sub-sectors in later levy periods before they are spread through Tier 3. Yet Treasury's April 2026 illustration effectively carried forward an amount above the $250 million annual levy cap. If liabilities can be deferred across levy periods to manage the scheme-wide cap, the same mechanism should be available to preserve responsibility for connected costs. Without it, the caps operate as permanent discounts for connected sectors rather than timing mechanisms, and Tier 3 ceases to be a genuine last resort.

Third, there is no requirement to pursue recovery from connected parties before costs are spread through Tier 3. The reimbursements by Macquarie Investment Management Limited (MIML) and Netwealth demonstrate that recovery from entities involved in the pathway to loss is possible and can materially reduce CSLR compensation costs. The CSLR operator's expanded recovery powers should therefore be used before unrelated sectors are levied, with amounts recovered after a Tier 3 levy credited first to Tier 3 payers. Recovery should be an integral step in the waterfall, not an action pursued only after costs have already been socialised.

Question 2 - Tier 1: Treasury has not justified limiting the special levy contribution to $10 million

The personal advice sub-sector is subject to the $20 million annual levy cap for 2026-27.[1] Costs above that cap may be recovered through a separate special levy. Under the proposed waterfall, Treasury would allocate a further $10 million to personal advice at Tier 1, although the framework permits a special levy contribution of up to $20 million. Treasury has not explained why only half of the available Tier 1 amount is proposed. Paragraph 29 of the consultation paper states that a lower contribution requires evidence that the levy would create a significant viability risk. No viability assessment has been published for personal advice.

The issue is not the $20 million annual levy cap. It is Treasury's unexplained decision to limit the additional Tier 1 special levy contribution to $10 million. A risk-based framework requires transparent thresholds so all affected sectors can understand how costs are allocated and test whether the same standard will apply in future years. Treasury should publish the rationale, evidence and viability analysis supporting the proposed amount. Otherwise, the sub-sector most directly associated with the losses receives an unexplained discount and the balance is shifted to less-connected sectors and super fund members without the type of viability assessment that this consultation foreshadows.

Question 3 - Tier 2: connection must be transparent and assessed on risk

Treasury proposes that an activity is connected where it formed a "substantive part" of the pathway to consumer loss, including through material involvement in creating, distributing, acquiring or continuing the harmful product or arrangement. SMC supports a connection-based approach in principle, but Treasury must define "substantive", the evidence required and the weight given to different forms of involvement.

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[1] ASIC, CSLR special levy, CSLR special levy | ASIC

The consultation paper states Treasury's conclusions but does not explain how substantive involvement is distinguished from facilitation, how evidence is weighted or why comparable functions receive different treatment. Treasury should publish its framework and the assessment for every activity considered, including platforms, IDPS operators, research houses and responsible entities, whether or not it is found to be connected. At a minimum, publication should cover:

- the connection criteria and thresholds,
- the evidence considered,
- the treatment of distribution and platform arrangements,
- the distinction between facilitative and substantive activities,
- the governance and assurance arrangements for assessments, and
- a process for affected sectors to comment before final determinations are made.

Connection is assessed by activity but levied by sub-sector

The waterfall assesses connection by reference to a product, service or regulated activity, but imposes the levy at the sub-sector level. This creates a structural mismatch where a sub-sector combines activities with materially different connections to the underlying loss. Connected and unconnected activities are pooled, so the levy cannot distinguish between firms whose activities formed part of the pathway to harm and firms in the same sub-sector that did not.

Treasury states at paragraph 25 of the consultation paper that the special levy cannot be adjusted within a sub-sector. On that approach, once any activity within a sub-sector is treated as connected, the cost is shared across the entire sub-sector. Conversely, if the pooled sub-sector is not treated as connected, activity with a direct connection may escape Tier 2 and its costs flow to Tier 3. Either result weakens the relationship between liability, risk and responsibility.

Paragraph 22 shows that the sub-sector architecture is not fixed: Treasury proposes to refine the treatment of exchange participants where the existing classification does not support an appropriate allocation. The same principle should apply where a sub-sector pools activities with different risk and connection profiles. Platform activity, including IDPS and IDPS-like (superannuation) platform activity, should therefore be separated from master trust activity for assessment.

Treasury has not established functional equivalence between platform and master trust activity

Treasury has not explained why platform and master trust activities should receive identical CSLR funding treatment when they have developed under materially different regulatory settings. IDPS operators are not regulated as responsible entities of registered managed investment schemes. They operate under ASIC class order relief, which exempts them from scheme registration and relies on an IDPS guide and the disclosure documents of the underlying products, and the investments they hold are not themselves superannuation interests. Superannuation platforms sit within APRA-regulated RSEs, but the prudential framework was built around investment options the trustee selects. How it applies to large adviser-directed menus has been less developed. Menu options are also excluded from the performance test and dashboards, and fees and costs may be treated differently under RG 97.

The more fundamental difference is how accountability is spread. In a master trust, the trustee selects and monitors investment options and holds the member relationship. In a platform structure, product selection, ongoing oversight and the client relationship are shared between the platform operator, the RSE trustee, and the financial adviser, and each have interrelated accountabilities. The Financial Accountability Regime does not close this gap. It requires RSE licensees to allocate accountability for their own operations, and platform trustees are subject to it in the same way as master trust trustees. But IDPS operators that are not themselves accountable entities, advisers, and the promoters behind trustee-for-hire arrangements sit outside it. In a master trust, the accountability map covers the full chain from option selection to the member. On a platform, it covers one link in that chain. That diffusion was evident in Shield and First Guardian, where products were admitted to platform menus and advisers directed client money into them without effective scrutiny at any point in the chain. It also leaves open how strengthened due diligence and future financial resource requirements will operate in practice. Until these questions are resolved, platform and master trust activity do not present the same risk to the CSLR and should not be funded as if they did.

Proposed member-protection reforms may narrow those differences, but proposed law does not establish functional equivalence. The issue should be determined by implemented and supervised obligations, comparable standards of due diligence and financial resilience, and the resulting conduct record - not by an entity's label.

Treasury's April 2026 options paper contemplated that products acquired through platforms could support a connection finding for operators of IDPSs and used IDPS operators as a connected sector in its illustrative Shield and First Guardian waterfall. By contrast, the September paper reaches a materially different result, with responsible entities the only proposed Tier 2 sub-sector, while IDPS operators are allocated approximately $798,000 through Tier 3. Treasury has not explained the evidence or reasoning supporting that change. Absent that explanation, it is difficult to reconcile the September assessment with the broader connection pathways contemplated in the April consultation.

The CSLR revised estimate actuarial report does not make a connection finding, but it provides relevant evidence. Shield and First Guardian investments were facilitated through superannuation platforms. Substantial Macquarie Wrap and Netwealth investor cohorts and the super trustees involved were separately modelled. There were 736 related complaints against trustees as at 30 April 2026. Reimbursements by Macquarie Investment Management Limited and Netwealth also materially reduced estimated CSLR claim costs. This does not establish that IDPS operators must be included in Tier 2. However, Treasury should explain why platform activities capable of supporting a connection finding in April no longer satisfy the test in September. It should also explain why facilitating acquisition and continued holding was treated as administrative rather than material involvement under Treasury's criteria.

Question 4 - Tier 3 relies on supervisory intensity rather than risk, creating perverse incentives

Under Treasury's latest proposal, Tier 3 carries $120.3 million, or about 71 per cent, of the $170.3 million special levy. A tier bearing most of the levy is not a residual backstop. More fundamentally, Treasury proposes to allocate Tier 3 by regulatory effort. This applies a formula based on everyday regulatory engagements, supervisory intensity and regulator time - rather than by the risk that a sub-sector caused, enabled or could mitigate the consumer harm. **That is not a risk-based allocation.**

Using supervisory intensity instead of applying a proper proxy for risk makes safe, well-governed, mainstream entities pay more - precisely because they engage proactively with regulators, seek guidance, self-report issues and maintain transparent supervisory relationships. Regulator time may reflect the complexity or scale of an entity, the strength of its engagement or the prudential importance of close oversight. And that regulatory oversight activity has already been funded by super fund members in those regulated entities. It does not establish responsibility for the misconduct that generated a CSLR shortfall.

The methodology therefore creates a perverse incentive: proactive and transparent firms may face a larger levy, while less-engaged entities may contribute less. Over time, that risks discouraging early engagement, candid self-reporting of breaches and requests for regulatory guidance which are the behaviours that help regulators identify and prevent consumer harm. It also creates moral hazard by disconnecting the price signal from the activities that generated the losses and socialising the excess across sectors with strong compliance records.

Tier 3 should instead use evidence-based measures of responsibility for consumer harm and capacity to prevent or mitigate it. At minimum, Treasury should demonstrate that the selected metrics correlate with the risk of unpaid determinations, rather than treating ordinary prudential supervision as a reason to increase cross-subsidisation by APRA-regulated funds and their members.

The proposed allocation raises $40 million from responsible entities under Tier 2 and leaves $120.3 million across 21 Tier 3 sub-sectors, including approximately $23.79 million for super trustees. Applying the April settings to the same levy would instead leave $83.5 million for Tier 3 and approximately $16.5 million for super trustees. Treasury's September settings therefore shift an additional $36.8 million into Tier 3 and approximately $7.3 million onto super trustees, despite their having no identified connection to the losses.

Super fund members can be forced to pay through several channels for the same failure

Super fund members in a fund group may be exposed to the same CSLR shortfall through several channels, even where its products, advice and controls did not contribute to the collapses. The table below illustrates how those costs can flow multiple times through to everyday Australians who are members of one super fund.

Channel	Illustrative exposure for one fund group	Who ultimately bears it
Tier 3	Trustee levy allocated through the APRA-regulated super trustee sub-sector	Fund members through reduced fund resources
Tier 1	A related advice licensee contributes even where advice did not cause the losses	The advice business and, depending on group arrangements, members or customers
Supplier pass-through	Responsible entities and custodians recover levy costs through fees	Fund members through higher investment or administration costs
Existing protections	The fund already maintains ORFR resources and participates in the Part 23 framework for superannuation-sector failures	Fund members through capital held back from investment or sector-funded assistance

Members of APRA-regulated profit-to-member funds already finance protections for failures within the prudentially regulated super system. Fund resources support the operational risk financial requirement under SPS 114. Commonwealth assistance under Part 23 of the *Superannuation Industry (Supervision) Act 1993* can also be recouped through a levy on other APRA-regulated funds. The CSLR does not compensate losses arising from the operation of a super fund itself, yet these members are asked to fund claims through Tier 3. With no shareholders to absorb the charge, the cost comes from members' retirement savings. This supports SMC's long-held position that APRA-regulated profit-to-member funds should sit outside the CSLR levy base.

SMSFs should be brought into the levy base without delay

SMC welcomes the Government's intention to bring self-managed super funds into the CSLR funding framework rather than treat them differently to millions of other Australians with super. SMSF-related advice claims are a significant source of pressure on the scheme, yet SMSFs sit outside Part 23, hold no ORFR and will contribute nothing to the 2026–27 special levy. By contrast, APRA-regulated super trustees are expected to contribute approximately $23.79 million through Tier 3. Implementing SMSF contributions without delay would better align funding with those who benefit from CSLR protection.

Metrics, concentration and viability evidence

Treasury acknowledges that prescribed allocation metrics may concentrate liabilities within particular sub-sectors or business models and may not reflect connection to the underlying losses, financial capacity, market footprint or regulatory risk. A consistent and administratively efficient metric is important, but consistency alone does not make an allocation equitable. Treasury should continue to develop metrics that better reflect retail-facing activity and publish an assessment of any material concentration effects before making a final determination.

SMC does not currently have evidence that the levy threatens the viability of the APRA-regulated super trustee sub-sector, but viability should not be the sole measure of fairness. Treasury should also assess how liabilities are distributed within each sub-sector and whether the prescribed metrics create material concentration or unintended effects.

Further evidence and modelling: SMC is preparing fund-level analysis comparing the additional CSLR costs borne under the proposed allocation by a median-sized personal advice licensee and a median-sized profit-to-member fund and will provide it to Treasury separately. That analysis will illustrate the design issues set out in this submission; it is not needed to establish them and should not delay their correction.

Appendix: SMC modelling of the 2026-27 special levy

The first table compares Treasury's September proposals with the April settings and illustration. The Tier 1 figures are additional special levy contributions and are separate from the $20 million annual levy cap for personal advice. The second table shows the effect of applying the full $20 million Tier 1 special levy contribution and, as a sensitivity scenario, treating platform activity as connected at Tier 2. The platform scenario does not predetermine SMC's position. Treasury has not published the data required to separate platform and master trust effects, so the master trust allocation remains **TBC**.

$m	September proposal $10m Tier 1 special levy contribution, REs connected	April settings $20m Tier 1 special levy contribution, REs and IDPSs connected	April illustration Treasury's example (Table 5)
Special levy	170.3	170.3	219.4*
Tier 1 special levy: personal advice	10.0	20.0	20.0
Tier 2: connected sub-sectors	40.0	66.8	87.0
Tier 3: all other sub-sectors	120.3	83.5	112.4
Super trustees	**23.8**	**16.5**	**22.7**

* Sum of Tiers 1-3 as shown in Table 5 of Treasury's April consultation paper. Treasury quotes $239.4 million, which includes the $20 million annual levy. The April illustration used a higher levy because it included Treasury's earlier estimate of Shield and First Guardian costs. Finity's June estimate put 2026-27 costs lower.

Illustrative Tier 1 and platform scenarios

Scenario ($m)	Tier 1	Tier 2	Tier 3	APRA super / master trust effect
September proposal	10.0	40.0	120.3	23.8
Full Tier 1 special levy contribution only	20.0	40.0	110.3	Approximately 21.8 if the September Tier 3 shares are unchanged
Platform Tier 2 only	10.0	66.8	93.5	Cannot be isolated without Treasury's platform/master trust split
Combined SMC position*	20.0	66.8	83.5	April's 16.5 pooled super amount is not a master trust estimate. Treasury data is needed to test whether the separated amount is about 10.0.

* The scenario combining the application of the full Tier 1 special levy and treating platform activity as connected to Tier 2.

The "Full Tier 1 special levy contribution only" estimate above applies the September Tier 3 shares to a pool reduced by $10 million. The platform scenarios use the April connected-sub-sector total of $66.8 million as the available published proxy. Treasury should publish revised sub-sector allocations and the platform/master trust split.