07 October 2022

Financial System Division
Treasury
Langton Cr Parkes ACT 2060
By email: CSLR@treasury.gov.au

Dear Treasury Team

Compensation Scheme of Last Resort (CSLR)

The Australian Banking Association (**ABA**) thanks Treasury for the opportunity to comment on the *Financial Services Compensation Scheme of Last Resort Levy Regulations 2022* (**the Regulations**) and provides the following comments.

General principles

A fundamental design principle of the scheme must be that it is efficient, effective, and fair. To the greatest extent possible, the CSLR should impose costs on the sector that is responsible for the customer detriment.

With the ability to spread losses caused by one sub-sector across one or more sub-sectors, the CSLR encourages reduced incentive for individual financial entities to change behaviour and prevent customer detriment in the first instance. By extension, entities in sub-sectors which are never likely to be the subject of a claim upon the fund (e.g. those who are prudentially regulated and required to hold capital), are required to pay for, or cross subsidise, the wrongdoing of other financial entities.

Specific changes to the regulations

The ABA proposes these changes to improve the efficiency, fairness, and fairness of the CSLR

1. ***Delete Division 3 of the Regulations***

   Section 15 of the Regulations under Division 3 calculates the amount of any special levy to be spread across several sub-sectors by reference to section 15(1) of the *Financial Services Compensation Scheme of Last Resort Levy Bill 2022* (**the Levy Bill**). Section 9 of the Levy Bill creates the ability to impose a special levy that exceeds the sub-sector levy cap and spread that levy across one or more sub-sectors to deal with a revised claims, fees and costs estimate for a particular sub-sector that causes the sub-sector levy cap to be exceeded.

   By deleting Division 3 and the cross references to the Levy Bill, the policy objective of the sub-sector to which the detriment relates bears the cost of that detriment is achieved.

2. ***Override section 17(2) of the Levy Bill***

   Section 17(2) of the Levy Bill prescribes a sub-sector levy cap of $20 million unless the cap is exceeded because of a determination under s1069H of the *Corporations Act 2001* (Cth) proposed in Subdivision C, Division 4, Part 1, Schedule 3 of the *Financial Sector Reform Bill 2022* (Powers of the Minister). Note 2(b) in section 17(2) of the Levy Bill confirms that the

Minister's determination for any special levy necessary above the sub-sector levy cap can be imposed on all members of one or more sub-sectors.

Similar to 1. above the Regulations should override this ability and prescribe liability only to the sub-sectors causing the detriment responsible for any special levy.

3. ***Add 'Responsible entity' as a sub-sector to which a levy applies***

   Section 7 of the Levy Bill defines sub-sector as having the same meaning as in the *ASIC Supervisory Cost Recovery Levy Act 2017* (Cth). Section 35 of the *ASIC Supervisory Cost Recovery Levy Regulations 2017* includes responsible entities as a sub-sector. Adding responsible entities as a fifth sub-sector via the "leviable entity" definition in section 4 and section 6 of the Regulations would also be consistent with the principle that the entity responsible for, or contributing to, the detriment bear the costs.

   Inclusion of Responsible Entities could be limited to situations where the determinations which have caused the estimate to exceed the sub-sector cap are in respect of financial advice concerning Managed Investment Schemes. In this respect, Responsible Entities of Managed Investment Schemes could be responsible for losses attributable to this type of financial advice that the financial advice sub-sector cannot absorb under their sub-sector cap.

Other considerations

We also make the following points for consideration in drafting the Regulations:

- ***Ministerial Discretion*** - under proposed section 1069H(5)(b)) of the Corporations Act, the Minister must consider the impact of imposing a special levy on the viability of the specified sub-sector and the financial system more broadly.
- ***Entity Metric Definition*** – the credit providers sub-sector entity metric in section 12 is defined as "the gross amount of credit provided by the person in the qualifying period for the levy period under credit contracts (other than small amount credit contracts or medium amount credit contracts." We believe that the intent is to calculate the gross amount of credit provided during the qualifying period, rather than credit outstanding, and seek clarity to this effect.

Again, thank you for the opportunity to comment and the ABA looks forward to continued engagement on these matters. Please do not hesitate to contact [redacted] or [redacted] in this regard.

Yours sincerely

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About the ABA

The Australian Banking Association advocates for a strong, competitive, and innovative banking industry that delivers excellent and equitable outcomes for customers.

We promote and encourage policies that improve banking services for all Australians, through advocacy, research, policy expertise and thought leadership