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| Committee | Senate Economics Legislation Committee |
| Inquiry | Inquiry into the Financial Accountability Regime Bill 2022, Financial Sector Reform Bill 2022, Financial Services Compensation Scheme of Last Resort Levy (Collection) Bill 2022 and the Financial Services Compensation Scheme of Last Resort Levy Bill 2022. |
| Question No. | 002 |
| Date | 14 October 2022 |
| Topic | ASIC's oversight role of AFCA and CSLR |
| Reference | Spoken, 14 October 2022, Hansard page 19 |
| Committee member | Senator Andrew Bragg |

Question

Senator BRAGG: What is ASIC going to do, in terms of its internal controls, to ensure that it doesn't end up in a situation where it's giving advice directly or through its new subsidiaries—which will include AFCA and the compensation scheme—and is in a position where it's conflicted and recommending that the government of the day draw funds from the industry where there should have been more substantive law enforcement?

Mr Kirk: The structure of the scheme itself provides barriers. It's happening in the sense that, again, as Sarah Edmondson was saying, for any individual consumer to get compensated through the compensation scheme of last resort, they first have to go through the IDR process and, if necessary, go to an EDR process, have a determination made in their favour—so there are findings that there's been wrongful conduct in relation to them or at least liability—and then it has to be established that the entity is insolvent and unable to pay. And only then does the scheme—

Senator BRAGG: I understand how the law is designed. What I want to know is—and maybe you can take this on notice—what risk and control framework is ASIC going to have to manage the risk that I just outlined to you verbally? If you'd take it on notice, I'd be grateful.

Answer

Neither AFCA nor the proposed CSLR, are subsidiaries of ASIC. They are independent entities, each established under legislation, and subject to Ministerial authorisation (as proposed for the CSLR under the Bills).

ASIC has no proposed role in recommending to government the levies payable under the CSLR. It is proposed that the authorised operator of the CSLR is required to estimate on an annual basis the levies that will be required to meet the CSLR's claims, fees, and costs. These levies are subject to an annual cap (overall and by sub-sector) under the proposed Bills and metrics and calculations set out in draft Regulations. It is proposed that the Minister has power to issue a legislative instrument to impose a special levy in particular prescribed circumstances. There is no conflict between ASIC's enforcement role and the funding of the CSLR.