

## **EXPLANATORY STATEMENT**

### *Corporations Act 2001*

#### *Corporations Amendment (Financial Services Compensation Scheme of Last Resort) Regulations 2023*

Subsection 1364(1) of the *Corporations Act 2001* (the Corporations Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Specifically, the *Corporations Amendment (Financial Services Compensation Scheme of Last Resort) Regulations 2023* (the Regulations) relies on the following regulation-making powers in the Corporations Act:

- subsection 1069F(4) of the Corporations Act, which provides that a notice given by the operator of the compensation scheme of last resort (CSLR) to the Minister must include the information (if any) prescribed by the regulations; and
- subsection 1069G(1) of the Corporations Act, which provides that the CSLR operator must, as soon as reasonably practicable after the end of a levy period, prepare a report for the levy period containing information about the matters prescribed by the regulations.

The purpose of the Regulations is to support the amendments made by the *Treasury Laws Amendment (Financial Services Compensation Scheme of Last Resort) Act 2023* (the Act), which established the CSLR.

The CSLR provides for compensation to be paid to a consumer where a determination requiring the payment of compensation issued by the Australian Financial Complaints Authority (AFCA) remains unpaid and the determination relates to a financial product or service within the scope of the CSLR. The Act provides that the Minister may authorise a company limited by guarantee to operate the CSLR, which is to be known as ‘the CSLR operator’.

The CSLR levy framework provides for a levy to be imposed on parts of the financial services industry to fund the scheme. The levy framework is provided for by the *Financial Services Compensation Scheme of Last Resort Levy Act 2023* and the *Financial Services Compensation Scheme of Last Resort Levy (Collection) Act 2023*.

Under the CSLR levy framework, the CSLR operator is responsible for determining the amounts to be levied based on actuarial analysis of expected claims, fees and costs for each levy period and sub-sector. The levy amounts determined by the CSLR operator are required to be paid by entities that are members of the prescribed sub-sectors, which are specified in the Financial Services Compensation Scheme of Last Resort Levy Regulations 2023. The amount of levy that is able to be imposed for a levy period is limited by a scheme levy cap (of \$250 million per levy period across all members of all sub-sectors) and a sub-sector levy cap (of \$20 million per levy

period, or an alternate amount prescribed by regulations, across all members of a particular sub-sector. While the scheme levy cap may not be exceeded, the sub-sector levy cap can be exceeded through a Ministerial determination.

The Regulations amend the Corporations Regulations 2001 to prescribe the information that:

- the CSLR operator must include in the notice required to be given to the Minister, for the purposes of subsection 1069F(4) of the Corporations Act, if a revised claims, fees and costs estimate could cause the sub-sector levy cap for a levy period and a sub-sector to be exceeded (or further exceeded); and
- must be included in the CSLR operator's report at the end of each levy period for the purposes of subsection 1069G(1) of the Corporations Act. This is intended to improve the transparency of the CSLR and includes information about the number and scope of applications for compensation, the number and details of any determinations made by the Minister and the amount of compensation paid.

Public consultation on the draft regulations took place between 8 September and 7 October 2022. Submissions were received from industry groups, consumer groups, and the general public, and did not identify any fundamental flaws or issues. Accordingly, no changes were made to the proposed Regulations in response to stakeholder submissions.

Details of the Regulations are set out in [Attachment A](#).

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commenced on the later of:

- the day after this instrument was registered on the Federal Register of Legislation; and
- the day Schedule 1 to the *Treasury Laws Amendment (Financial Services Compensation Scheme of Last Resort) Act 2023* commenced.

The Financial Services Royal Commission Final Report has been certified as being informed by a process and analysis equivalent to a Policy Impact Analysis for the purposes of the Government decision to implement this reform. The Financial Services Royal Commission Final Report can be accessed from the Australian Parliament House website.

A statement of Compatibility with Human Rights is at [Attachment B](#).

**Details of the Corporations Amendment (Financial Services Compensation Scheme of Last Resort) Regulations 2023**

**Section 1 – Name of the Regulations**

This section provides that the name of the Regulations is the *Corporations Amendment (Financial Services Compensation Scheme of Last Resort) Regulations 2023* (the Regulations).

**Section 2 – Commencement**

The Regulations commenced on the later of:

- day after this instrument was registered on the Federal Register of Legislation; and
- the day Schedule 1 to the *Treasury Laws Amendment (Financial Services Compensation Scheme of Last Resort) Act 2023* commenced.

**Section 3 – Authority**

The Regulations are made under the *Corporations Act 2001* (the Corporations Act).

**Section 4 – Schedule**

This section provides that each instrument that is specified in the Schedule to this instrument will be amended or repealed as set out in the applicable items in the Schedule, and any other item in the Schedule to this instrument has effect according to its terms.

**Schedule 1 – Amendments**

Schedule 1 of the Regulations amends the Corporations Regulations 2001 (Corporations Regulations) to prescribe matters related to the financial services compensation scheme of last resort (CSLR) operator's reporting requirements.

**Item 1 – Part 7.10B – Financial Services Compensation Scheme of Last Resort**

*Reporting by the CSLR operator if sub-sector levy cap could be exceeded (or further exceeded)*

Generally, the CSLR levy framework relies on an 'annual levy' as its primary funding mechanism. The annual levy covers the amounts of claims, fees, and costs that the CSLR operator estimates will be payable for a levy period and a sub-sector. The claims, fees and costs estimates cover:

- the total amount of compensation payable for the levy period and the sub-sector;

- the portion of AFCA’s unpaid fees (other than in relation to pre-CSLR complaints) that will be attributable to the sub-sector for the levy period;
- the CSLR operator and the Australian Securities and Investments Commission’s administrative costs for the levy period;
- the amount required to establish or maintain the CSLR operator’s capital reserve (if required); and
- any shortfalls or excesses for an earlier levy period and the sub-sector.

If, for any reason, the amount of annual levy collected in accordance with an initial claims, fees and costs estimate determined by the CSLR operator is insufficient, or is likely to be insufficient, to meet the costs estimated to be incurred by the scheme, the CSLR operator may determine a revised claims, fees, and costs estimate for the levy period and a sub-sector and impose a ‘further levy’ up to the sub-sector levy cap. This could happen, for example, where a large financial services provider becomes insolvent.

If a revised claims, fees and costs estimate for the levy period and a sub-sector could cause the sub-sector levy cap to be exceeded, the CSLR operator must notify the Minister in writing as soon as practicable. The CSLR levy framework includes a special funding mechanism (‘special levy’), which provides for the Minister to make a determination imposing a special levy to cover the shortfall for a levy period. Subsection 1069F(4) of the Corporations Act provides that a notice given by the CSLR operator to the Minister must include the information prescribed by regulations.

Item 1 of Schedule 1 of the Regulations inserts regulation 7.10B.50 into the Corporations Regulations for the purposes of subsection 1069F(4) of the Corporations Act. Regulation 7.10B.50 prescribes the information the CSLR operator must include in the notice the CSLR operator is required to give to the Minister if a revised claims, fees and costs estimate could cause the sub-sector levy cap to be exceeded (or further exceeded).

Regulation 7.10B.50 of the Corporations Regulations provides that the CSLR operator’s notice to the Minister must include the following information:

- the number of applications for compensation on which the revised estimate is based;
- the total amount of compensation that (having regard to actuarial principles) will be payable for those applications; and
- the portion of AFCA’s unpaid fees that (having regard to actuarial principles) relate to those applications and will be attributable to the sub-sector.

The purpose of this information is to assist the Minister in exercising the power to make a determination (or not) under section 1069H of the Corporations Act.

### *Reporting by the CSLR operator after the end of each levy period*

Section 1069G of the Corporations Act provides that the CSLR operator must, as soon as reasonably practicable after the end of each levy period, prepare a report for the levy period that contains information about the matters prescribed by regulations. This report must be published on the CSLR operator's website.

Item 1 of Schedule 1 of the Regulations inserts regulation 7.10B.55 into the Corporations Regulations for the purposes of subsection 1069G(1) of the Corporations Act. Regulation 7.10B.55 provides that the CSLR operator's report for each levy period must include all of the following information:

- the operator's estimate of the costs for the scheme, including each claims, fees and costs estimate for the levy period and the operator's approach to determining these estimates;
- the number of applications for compensation made during the levy period, including:
  - the number of applications that were not eligible for compensation; and
  - the number of outstanding applications (that is, the applications which the CSLR operator received but had yet to make an offer of compensation or notify the consumer that they were not eligible for compensation);
- the number of payments of amounts of compensation made during the levy period and the total of those amounts;
- for the levy period, the average time taken after receiving an application for compensation for the CSLR operator to either make an offer of compensation or notify the consumer that they were not eligible for compensation;
- an analysis of the applications for compensation made during the levy period, including about:
  - the kinds of products or services covered by the relevant AFCA determinations to which the applications relate;
  - the kinds of providers of the products and services to which the applications relate; and
  - any patterns or trends;
- the number of notifications made by the CSLR operator to the Minister during the levy period about a revised claims, fees and costs estimate that could cause a sub-sector levy cap to be exceeded (or further exceeded);
- the total amount of levy paid by each sub-sector during the levy period; and
- the following information about determinations made by the Minister to impose a special levy on one, or several, sub-sectors:

- the number of determinations made and the details of those determinations;  
and
- the details of the levy paid as a result of those determinations.

**Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

**Corporations Amendment (Financial Services Compensation Scheme of Last Resort) Regulations 2023**

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

**Overview of the Legislative Instrument**

The purpose of the Corporations Amendment (Financial Services Compensation Scheme of Last Resort) Regulations 2023 (the Regulations) is to support the amendments made by the *Treasury Laws Amendment (Financial Services Compensation Scheme of Last Resort) Act 2023* (the Act), which established the Compensation Scheme of Last Resort (CSLR).

The CSLR provides for compensation to be paid to a consumer where a determination requiring the payment of compensation issued by the Australian Financial Complaints Authority (AFCA) remains unpaid and the determination relates to a financial product or service within the scope of the CSLR. The Act provides that the Minister may authorise a company limited by guarantee to operate the CSLR, which is to be known as ‘the CSLR operator’.

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Under the CSLR levy framework, the CSLR operator is responsible for determining the amounts to be levied based on actuarial analysis of expected claims, fees and costs for each levy period and sub-sector. The levy amounts determined by the CSLR operator are required to be paid by entities that are members of the prescribed sub-sectors, which are specified in the Financial Services Compensation Scheme of Last Resort Levy Regulations 2023. The amount of levy that is able to be imposed for a levy period is limited by a scheme levy cap (of \$250 million per levy period across all members of all sub-sectors) and a sub-sector levy cap (of \$20 million per levy period, or an alternate amount prescribed by regulations, across all members of a particular sub-sector). While the scheme levy cap may not be exceeded, the sub-sector levy cap can be exceeded through a Ministerial determination.

The Regulations amend the Corporations Regulations 2001 to prescribe the information that:

- the CSLR operator must include in the notice required to be given to the Minister, for the purposes of subsection 1069F(4) of the Corporations Act, if

a revised claims, fees and costs estimate could cause the sub-sector levy cap for a levy period and a sub-sector to be exceeded (or further exceeded); and

- must be included in the CSLR operator's report at the end of each levy period for the purposes of subsection 1069G(1) of the Corporations Act. This is intended to improve the transparency of the CSLR and includes information about the number and scope of applications for compensation, the number and details of any determinations made by the Minister and the amount of compensation paid.

The matters that are required to be reported by the CSLR operator do not include personal information, and do not engage any of the applicable rights or freedoms.

### **Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

### **Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.