

13 February 2026

Mr Heath Hudson
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via email: CSLR@treasury.gov.au

Dear Mr Hudson

Treasury consultation - financial service professional indemnity insurance

The ASBFEO welcomes the opportunity to respond to Treasury's request for feedback on its December 2025 Consultation Paper (the Paper) on enhancing the effectiveness of professional indemnity insurance (PII) for the Australian financial services (AFS) sector. This submission articulates the ASBFEO's views on, and proposals to enhance, the design and structure of PII to better support the Compensation Scheme of Last Resort (CSLR). These are informed by the ASBFEO's recent consultations with key small business and family enterprise stakeholders.

Small businesses are the engine room of the Australian economy. They employ approximately 5 million Australians, representing 42% of the private-sector workforce, and contribute around one-third —\$590 billion annually— of Australia's GDP.¹ While small business is often defined as having an annual turnover of \$10 million or less, about 93% of these have a turnover of less than \$2 million.² This indicates that most Australian small businesses operate on a small or micro scale with very limited resources, raising a range of challenges which differ markedly from those faced by larger enterprises.

The CSLR has an important policy objective, and PII is critical to delivering on that

The ASBFEO supports the CSLR's policy intent to provide a mechanism through which victims of financial misconduct, including small businesses, can seek redress, once all other avenues have been exhausted. While the CSLR's objectives are important, the costs of funding the scheme are high. Furthermore, the CSLR's current funding model means these costs are shared across all AFS sub-sectors, even in those sub-sectors that pose little, or no, risk of wrongdoing that gives rise to compensation.

PII is a critical first line of defence, so affordable access to PII is critical to sustaining the CSLR as a source of last resort compensation for victims of negligent or fraudulent financial advice. The ASBFEO recognises that AFS licensees' (AFSLs) access to affordable PII needs to be enhanced, so the CSLR can be sustained at a cost that is not overly burdensome for AFSLs.

¹ Australian Small Business and Family Enterprise Ombudsman (ASBFEO), *Number of small businesses in Australia*, August 2024, accessed 6 February 2025

² ASBFEO, *Number of small businesses in Australia*, accessed 6 February 2025



CSLR's cross-subsidisation funding model unfairly imposes costs on compliant small businesses

The CSLR is an increasing cost for small business AFSs, whether through the ever-growing CSLR levy and, where deemed necessary, special levies. Where PII is not available nor fit-for-purpose to satisfy claims of compensation the more those claims need to draw on CSLR funds, putting further pressure on AFS levies, a point noted in the Paper.³

The CSLR has indicated the FY26 levy for financial advice will be \$47.3 million over the \$20 million sub-sector cap. Legislation governing the scheme requires a special levy to cover this additional funding.⁴ The impact of this special levy has been estimated to add an extra \$700 per adviser.⁵

'Cross-subsidisation' within the CSLR funding model also unfairly imposes costs on small business AFSs who pose a low risk of non-compliance and no record of fault. In effect, misconduct by a small proportion of AFSs has a cost impact on all AFSs, including small businesses with limited resources.

PII products have become more accessible for AFSs, but there is room for improvement

The Paper points out that, in recent years, PII in Australia has become easier and less costly to obtain and, in general, much more accessible for the vast majority of AFSs. This has also been the experience of small business stakeholders whom we have spoken with.

While more accessible PII is a positive development, the ASBFEO notes that the financial services sector has undergone substantial regulatory change over the last decade which has had a significant impact on small business AFSs. If further change is considered necessary, Government could mitigate these impacts through some specific refinements to the policy settings for PII.

Recognise the challenges the AFS sector will face in adapting to further regulatory change

The AFS sector has become highly fragmented. As of September 2025, there were 5,945 financial advice practices in Australia, with an average of only 2.6 advisers per practice, the vast majority (over 96%) of which are privately owned.⁶ These small businesses typically operate on thin margins and have a very limited ability to absorb additional compliance costs. Regulatory costs continue to represent a high proportion of the costs of giving advice in the AFS sector, and a large part of this is in the form of PII costs and the CSLR levy.⁷

The AFS sector has also become more precarious, reflected in the rapidly shrinking pool of advisers on which it depends. In the last six years, the number of financial advisers listed on the Financial Adviser Register has almost halved, down from 26,500 in 2019 to about 15,300 as of July

³ Treasury, *Enhancing the effectiveness of financial service professional indemnity insurance*, Commonwealth of Australia, December 2025, p 3.

⁴ Section 9, *Financial Services Compensation Scheme of Last Resort Levy Act 2023*

⁵ Professional Planner 2025, 'Unfair and unsustainable': Advisers double dipped for CSLR special levy, accessed 2 February 2025

⁶ SMS Magazine 2025, *FAAA wants CSLR levy capped at \$20m*, accessed 2 February 2025

⁷ Regulatory costs to AFSs typically include: licensee fees; PII; the ASIC Industry Funding Levy; and, the CSLR Levy: Money Management 2025, *Should advisers detail regulatory fees to their clients*, accessed 2 February 2025



2025.⁸ The causes of this are many and complex, and beyond the scope of this submission to address. It is clear, however, that continued cost increases through CSLR levies will accelerate this decline.

It is well-recognised that PII has inherent limitations, as a form of liability mitigation for AFSLs generally, and as a source of funding for compensation to consumers.⁹ Consequently, while the ASBFEO supports improved AFSL access to PII products, measures to achieve this should be right-sized for small business, that is, proportionate, targeted and carefully implemented; the more immediate and sweeping reforms are, the greater the risk of unintended consequences for small business.

Strengthen regulatory oversight of the adequacy of PII coverage

Adequacy of PII coverage should be one of the main areas of focus for PII reforms. Section 912B of the *Corporations Act 2001* imposes a broad obligation on AFSLs to adopt ‘arrangements for compensating retail clients’ for losses arising from breaches of AFSLs’ obligations. This is complemented by ASIC guidance on the adequacy of coverage, which indicates that AFSLs with gross revenue:

- of up to \$2 million will be adequately covered by a minimum PII limit of at least \$2 million
- exceeding \$2 million will be adequately covered by a PII limit at least equal to that revenue
- exceeding \$20 million will be adequately covered by a PII limit of at least \$20 million.¹⁰

These thresholds are intended to ensure AFSLs are protected by adequate cover, commensurate with their potential exposure to consumer loss. However, this provides only an approximate measure of exposure to financial risk. For example, one implication of the upper threshold of \$20 million is that AFSLs may be operating with potentially hundreds of millions of dollars in exposure to compensation claims, for which there is a disproportionately small level of PII cover.

ASIC’s regulatory oversight of an AFSL’s PII coverage would be enhanced through preventive risk-calibrated measures of oversight of AFSL’s business. These would complement the threshold proxy measure with additional measures of financial risk, informed by easily collectable, reliable data. These measures should be easy-to-monitor and focus on early-warning signs, or triggers for, inadequate coverage – for example, repeated Australian Financial Complaints Authority (AFCA) complaints, or drastic but uninsured changes in AFSLs’ scale of operations.

This proposal could be integrated with the Paper’s suggestion for increased ASIC oversight through additional collection of data. This could be achieved through recourse to routine, annual AFSL audits. These basic audits could then be complemented by more thorough audits with organisations flagged to be at high risk of having inadequate cover, based on analysis of the data.

⁸ Independent Financial Adviser 2025, *Accounting body raises the alarm on dwindling adviser numbers*, accessed 2 February 2025

⁹ Julie Abramson, Alan Kirkland and Ian Ramsay, *Review of the Financial System External Dispute Resolution and Complaints Framework: Final Report*, Commonwealth of Australia, April 3, 2017

¹⁰ Australian Securities and Investments Commission, *Regulatory Guide 126: Compensation and insurance arrangements for AFS licensees*, (RG 126, 21 November 2024) [RG 126.50]



Make it easier for external administrators to pursue PII claims

The ASBFEO agrees with the Paper's position that corporate administrators have a disincentive to pursue PII claims on behalf of the AFSL under their administration. Given the high, and growing, number of AFSLs entering liquidation, this represents a high risk of unpaid AFCA determinations, placing unnecessary demand on CSLR funds. One of the main disincentives is that administrators are generally inexperienced in navigating the potentially complex pathways of PII claims. This could be partially addressed through reforms authorising recourse to a Government-appointed CSLR expert, who could advise on or manage PII claims in respects of AFSLs under administration.

Thank you for the opportunity to comment. If you require further information, please do not hesitate to contact the Advocacy Team via email at advocacy@asbfeo.gov.au.

Yours sincerely

The Hon. Bruce Billson

Australian Small Business and Family Enterprise Ombudsman