



# **Treasury Laws Amendment (Financial Services Compensation Scheme of Last Resort) Act 2023**

**No. 46, 2023**

**An Act to establish the financial services compensation scheme of last resort, and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation (<https://www.legislation.gov.au/>)



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# Treasury Laws Amendment (Financial Services Compensation Scheme of Last Resort) Act 2023

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**An Act to establish the financial services compensation scheme of last resort, and for related purposes**

*[Assented to 3 July 2023]*

The Parliament of Australia enacts:

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No. 46, 2023      *Treasury Laws Amendment (Financial Services Compensation Scheme of Last Resort) Act 2023*      1

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## 1 Short title

This Act is the *Treasury Laws Amendment (Financial Services Compensation Scheme of Last Resort) Act 2023*.

## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	3 July 2023
2. Schedule 1	At the same time as the <i>Financial Services Compensation Scheme of Last Resort Levy Act 2023</i> commences.  However, the provisions do not commence at all if that Act does not commence.	4 July 2023

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Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

## 3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Financial services compensation scheme of last resort**

### **Part 1—Main amendments**

#### ***Corporations Act 2001***

##### **1 Section 9**

Insert:

***accumulation recovery day*** means 8 September 2022.

***AFCA's accumulated unpaid fees*** has the meaning given by subsection 1058B(4).

***AFCA's unpaid fees***, for a month, has the meaning given by subsection 1058B(2).

***capital reserve establishment contribution*** has the same meaning as in the *Financial Services Compensation Scheme of Last Resort Levy (Collection) Act 2023*.

***CSLR operator*** (short for financial services compensation scheme of last resort operator) means the person for whom an authorisation under section 1060 is in force.

***CSLR staff member*** means:

- (a) a director, officer or employee of the CSLR operator; or
- (b) a person engaged as a consultant to, or to perform services for, the CSLR operator for the purposes of the financial services compensation scheme of last resort.

***financial services compensation scheme of last resort*** means the financial services compensation scheme of last resort established under Part 7.10B.

***financial services compensation scheme of last resort operator***: see ***CSLR operator***.

***first levy period*** has the same meaning as in the *Financial Services Compensation Scheme of Last Resort Levy Act 2023*.

*levy period* has the same meaning as in the *Financial Services Compensation Scheme of Last Resort Levy Act 2023*.

*pre-CSLR complaint* has the same meaning as in the *Financial Services Compensation Scheme of Last Resort Levy (Collection) Act 2023*.

*relevant AFCA determination* has the meaning given by section 1065.

*revised claims, fees and costs estimate* has the same meaning as in the *Financial Services Compensation Scheme of Last Resort Levy Act 2023*.

*sub-sector* has the same meaning as in the *Financial Services Compensation Scheme of Last Resort Levy Act 2023*.

*sub-sector levy cap* has the same meaning as in the *Financial Services Compensation Scheme of Last Resort Levy Act 2023*.

## **2 At the end of Part 7.10A**

Add:

### **Division 4—Information sharing and reporting**

#### **1058A Authorised use or disclosure of information**

- (1) An AFCA staff member may use or disclose information or documents obtained by an AFCA staff member under or for the purposes of this Part if:
  - (a) the use or disclosure is for the purposes of:
    - (i) this Part; or
    - (ii) Part 7.10B; or
    - (iii) the *Financial Services Compensation Scheme of Last Resort Levy Act 2023*; or
    - (iv) the *Financial Services Compensation Scheme of Last Resort Levy (Collection) Act 2023*; or
  - (b) the use or disclosure is to the CSLR operator for the purposes of assisting the CSLR operator to perform its functions or exercise its powers.



(2) In this section:

*use or disclosure*, for information or documents, includes making a record of the information, disclosing the information, producing the document or permitting access to the document.

### **1058B AFCA reporting to CSLR operator**

#### *Notification of unpaid fees to CSLR operator*

(1) AFCA must notify the CSLR operator, in writing, of AFCA's unpaid fees, for a month ending on or after the accumulation recovery day, as soon as practicable after the end of the month.

Note: The notification could include information about AFCA's unpaid fees, including whether those fees relate to pre-CSLR complaints.

(2) *AFCA's unpaid fees*, for a month, is the sum of each fee (however described) that:

- (a) relates to one or more complaints, each of which:
  - (i) at the time the complaint is made, is a complaint against a person (the *AFCA member*) who (at that time) is a member of the AFCA scheme; and
  - (ii) is a complaint about a product, or service, of a kind mentioned in subsection 1065(2); and
  - (iii) is a complaint that has been finalised by AFCA (including by making a determination); and
- (b) AFCA has charged to the AFCA member (or would have so charged were the AFCA member still in existence); and
- (c) the AFCA member has not paid to AFCA; and
- (d) AFCA finished taking steps to recover on or after the accumulation recovery day and during the month, which may have included taking one or more of the following steps if AFCA considered them appropriate (or possible):
  - (i) seeking an explanation from the AFCA member for the AFCA member not paying the fee;
  - (ii) explaining to the AFCA member the consequences of not paying the fee;
  - (iii) discussing with the AFCA member a reasonable payment plan or other alternatives to paying the fee;

- (iv) if the AFCA member is (or has become) a Chapter 5 body corporate—engaging with an officer of the Chapter 5 body corporate to assess whether the body can pay the fee to AFCA.

Note: In addition to the steps in subparagraphs (d)(i) to (iv), AFCA may take any other steps it considers appropriate and cost effective.

*AFCA's accumulated unpaid fees*

- (3) AFCA must notify the CSLR operator, in writing, of AFCA's accumulated unpaid fees as soon as practicable after the accumulation recovery day.
- (4) *AFCA's accumulated unpaid fees* is the sum of each fee (however described) that:
  - (a) relates to one or more complaints, each of which:
    - (i) at the time the complaint is made, is a complaint against a person (the *AFCA member*) who (at that time) is a member of the AFCA scheme; and
    - (ii) is a complaint about a product, or service, of a kind mentioned in subsection 1065(2); and
    - (iii) is a complaint that has been finalised by AFCA (including by making a determination); and
  - (b) AFCA has charged to the AFCA member (or would have so charged were the AFCA member still in existence); and
  - (c) the AFCA member has not paid to AFCA; and
  - (d) AFCA finished taking steps to recover during the period:
    - (i) starting on 1 November 2018; and
    - (ii) ending on the day before the accumulation recovery day;which may have included taking one or more of the steps mentioned in subparagraphs (2)(d)(i) to (iv) of this section if AFCA considered them appropriate (or possible).

### **3 After Part 7.10A**

Insert:

## **Part 7.10B—Financial services compensation scheme of last resort**

### **Division 1—Establishment of the scheme**

#### **1059 Establishment of the scheme**

The financial services compensation scheme of last resort is established by this Part.

#### **1060 Minister may authorise an operator of the scheme**

- (1) The Minister may, by notifiable instrument, authorise a person to operate the financial services compensation scheme of last resort if the Minister is satisfied the person will meet the mandatory requirements under section 1062.

Note: The person who is authorised by the Minister to operate the scheme is the CSLR operator (short for financial services compensation scheme of last resort operator).

- (2) An authorisation of a person to operate the financial services compensation scheme of last resort must not come into force while an authorisation of another person to operate that scheme is in force.
- (3) The Minister may, by notifiable instrument, vary or revoke an authorisation.
- (4) In an instrument made under subsection (1) or (3), the Minister:
  - (a) must specify the day the authorisation, variation or revocation comes into force; and
  - (b) may impose, vary or revoke conditions relating to the authorisation.

#### **1061 Minister may appoint independent member**

The Minister may, by written instrument, appoint an independent person to be a member of the board of the CSLR operator.

Note: The independent person appointed by the Minister is the Chair of the board (see the mandatory requirement in paragraph 1062(3)(d)).

## **1062 Mandatory requirements**

- (1) The mandatory requirements for a person (the *operator*) to operate the financial services compensation scheme of last resort are:
- (a) the organisational requirement under subsection (2); and
  - (b) the operator requirements under subsection (3); and
  - (c) the operational requirements under subsection (4); and
  - (d) the compliance requirements under subsection (5).

### *Organisational requirement*

- (2) The organisational requirement is that the operator does not require a person applying for compensation to pay any fee or charge to the operator, or to any other entity, in relation to the application.

### *Operator requirements*

- (3) The operator requirements are that:
- (a) the operator is a company limited by guarantee; and
  - (b) the operator's constitution provides that the operator must not be operated for profit; and
  - (c) the operator's constitution provides that amounts paid to the operator by the Commonwealth must be maintained for the purposes of the financial services compensation scheme of last resort; and
  - (d) the operator's constitution provides that the Chair of the board of the operator must be an independent person appointed by the Minister as a member of the board; and
  - (e) the operator's constitution provides that, within 6 months after the operator is authorised under section 1060, the following must be appointed as members of the board:
    - (i) a person who is a director of AFCA, or who is the Chair of the board of AFCA;
    - (ii) a person who is a Fellow of the Institute of Actuaries of Australia and has at least 5 years' experience in actuarial analysis.

### *Operational requirements*

- (4) The operational requirements are that:
-

- (a) the operator operates in accordance with the operator's constitution; and
- (b) the operator administers the financial services compensation scheme of last resort in accordance with this Part and regulations made for the purposes of this Part; and
- (c) the operator manages money of the operator in a manner that is efficient, effective and economical; and
- (d) the operator has appropriate expertise available to deal with applications for compensation; and
- (e) the operator has appropriate expertise available to undertake actuarial analysis and modelling to estimate the value of claims to be made against the financial services compensation scheme of last resort.

*Compliance requirements*

- (5) The compliance requirements are that:
  - (a) the operator is to ensure that any conditions of the authorisation of the operator (see paragraph 1060(4)(b)) are complied with; and
  - (b) the operator is to ensure that regulatory requirements issued under section 1069K are complied with.

## **Division 2—Compensation payments under the scheme**

### **1063 Compensation payments**

- (1) The CSLR operator must pay to a person an amount of compensation for a relevant AFCA determination made in respect of the person if:
  - (a) the person is eligible under section 1064 for compensation for the determination; and
  - (b) the amount of compensation for the determination is the amount referred to in section 1067; and
  - (c) the CSLR operator has offered under section 1068 that amount of compensation; and
  - (d) the person has accepted under section 1069 that offer of that amount of compensation.

- (2) The CSLR operator must pay the amount of compensation to the person:
- (a) in a single lump sum; or
  - (b) if a determination under subsection 1069H(2) specifies, under subsection 1069H(3), a class of persons that includes the person—in the instalments specified in the determination for that class of persons over the period specified in the determination.
- (3) The CSLR operator must not pay an amount under this section before:
- (a) the start of the first levy period; or
  - (b) any later day prescribed by regulations made for the purposes of this paragraph.

### **1064 Eligibility for compensation payments**

#### *Eligibility for compensation*

- (1) A person is eligible for compensation for a relevant AFCA determination made in respect of the person if:
- (a) the determination requires an amount to be paid to the person by an entity or body (the **relevant entity**), whether or not the relevant entity still exists; and
  - (b) the person has notified AFCA:
    - (i) within 12 months after the day the determination was made; or
    - (ii) within such longer period as AFCA agrees with the person;that the person has not been paid the amount; and
  - (c) in the case where the relevant entity still exists:
    - (i) AFCA has finished taking steps to require the amount to be paid to the person by the relevant entity, which may have included taking one or more of the steps mentioned in subsection (2) if AFCA considered them appropriate; and
    - (ii) AFCA has notified the person, in writing, that AFCA has finished taking such steps; and
  - (d) the amount has not been fully paid to the person; and

- (e) the person is not eligible to receive, under any other statutory compensation scheme, compensation:
  - (i) for the matters covered by the determination; and
  - (ii) for an amount equal to or greater than the amount required to be paid in accordance with the determination; and
- (f) the person applies in accordance with section 1066 to the CSLR operator for compensation for the determination; and
- (g) the person has not withdrawn that application for compensation; and
- (h) the CSLR operator reasonably believes, having regard to:
  - (i) the relevant entity's financial position (if the relevant entity still exists); or
  - (ii) any other reason;that the person is unlikely to be fully paid the amount in accordance with the determination.

Note: A person's application for compensation may be withdrawn at any time before an offer of compensation is accepted by the person (see subsection 1066(4)).

*Appropriate steps by AFCA*

- (2) For the purposes of paragraph (1)(c), the steps are the following:
  - (a) seeking an explanation from the relevant entity for the relevant entity not paying the amount to the person in accordance with the relevant AFCA determination;
  - (b) explaining to the relevant entity the consequences of not paying the amount to the person;
  - (c) discussing with the relevant entity a reasonable payment plan or other alternatives to paying the amount to the person;
  - (d) if the relevant entity is (or has become) a Chapter 5 body corporate—engaging with an officer of the Chapter 5 body corporate to assess whether the body will pay the amount to the person.

Note: In addition to these steps, AFCA may take any other steps it considers appropriate and cost effective.

### 1065 Meaning of *relevant AFCA determination*

- (1) A determination made by AFCA in respect of a person is a *relevant AFCA determination* if:
  - (a) the determination relates to a complaint by the person that:
    - (i) at the time the complaint is made, is a complaint against another person (the *relevant entity*) who (at that time) is a member of the AFCA scheme; and
    - (ii) is a complaint about a product, or service, of a kind mentioned in subsection (2); and
  - (b) the determination:
    - (i) requires the relevant entity to pay an amount to the person, whether or not the relevant entity still exists; and
    - (ii) is accepted by the person.
- (2) For the purposes of subparagraph (1)(a)(ii), the kinds of products and services are as follows:
  - (a) engaging in a credit activity (within the meaning of the *National Consumer Credit Protection Act 2009*):
    - (i) as a credit provider; or
    - (ii) other than as a credit provider;
  - (b) providing financial product advice that is personal advice provided to a person as a retail client about one or more products that include at least one relevant financial product (within the meaning of Part 7.6 of this Act);
  - (c) dealing in securities for a person as a retail client, other than issuing securities.
- (3) In this section:

*credit provider* has the same meaning as in any Part of the *National Consumer Credit Protection Act 2009* other than Part 3-2CA.

### 1066 Applications for compensation payments

- (1) A person may apply, in the approved form, to the CSLR operator for compensation for a relevant AFCA determination made in respect of the person.



- (2) An application is in the approved form if and only if:
  - (a) it is in the form approved by the CSLR operator; and
  - (b) it includes any information (including any declarations) required by the form; and
  - (c) it is given in the manner required by the CSLR operator.
- (3) The CSLR operator may approve a form for the purposes of paragraph (2)(a).
- (4) If a person makes an application for compensation for a relevant AFCA determination made in respect of the person, the person may:
  - (a) amend the application at any time before the CSLR operator offers under section 1068 to the person an amount of compensation for the determination; or
  - (b) withdraw the application any time before the person accepts under 1069 such an offer.

### **1067 Amount of compensation payments**

The amount of compensation for a person for a relevant AFCA determination made in respect of the person must be an amount equal to the lower of the following amounts:

- (a) \$150,000;
- (b) the amount payable to the person in accordance with the relevant AFCA determination, less:
  - (i) any amount paid to the person in accordance with the relevant AFCA determination, including any partial payments or any payments made to the person as an unsecured creditor of a Chapter 5 body corporate for the matters covered by the determination; and
  - (ii) any compensation to which the person is eligible under any other statutory compensation scheme for the matters covered by the determination; and
  - (iii) any other payments made to the person of a kind prescribed by regulations made for the purposes of this subparagraph.

Note: This means, subject to the cap in paragraph (a), the amount payable to the person must be the amount required to be paid in accordance with the relevant AFCA determination. The amount payable cannot

include, for example, an additional interest component not mentioned in that determination.

## **1068 Offer of compensation payments**

### *Offer of compensation*

- (1) If a person is eligible under section 1064 for compensation for a relevant AFCA determination made in respect of the person, the CSLR operator must offer to the person, in writing, the amount of compensation referred to in section 1067 for the determination.
- (2) The offer must explain the effect of section 1069A (subrogation of rights).
- (3) Before the offer is accepted by the person, the CSLR operator may vary or revoke the offer if the CSLR operator reasonably believes:
  - (a) there is an error relating to the offer; or
  - (b) there is fraud relating to the offer; or
  - (c) there is a change in circumstances affecting:
    - (i) the person's eligibility under section 1064 for the amount of compensation in the offer; or
    - (ii) the amount of compensation in the offer; or
  - (d) other exceptional circumstances exist that justify the variation or revocation.

### *Notification that person is not eligible for compensation*

- (4) If a person:
  - (a) is not eligible under section 1064 for compensation for a relevant AFCA determination made in respect of the person; and
  - (b) has made an application under section 1066 for compensation for the relevant AFCA determination;the CSLR operator must, as soon as reasonably practicable, notify the person, in writing, that the person is not eligible for compensation.
- (5) A notice to a person under subsection (4) must include reasons why the person is not eligible for compensation.

### **1069 Acceptance of offer of compensation payments**

- (1) A person accepts an offer made under section 1068 of an amount of compensation if the person notifies the CSLR operator, in writing, that the person accepts the offer.
- (2) If the person does not accept the offer within 90 days after the day the offer is made, the person is taken to have withdrawn their application for compensation for the relevant AFCA determination to which the offer relates.

### **1069A CSLR operator's right of subrogation if compensation is paid**

If:

- (a) the CSLR operator pays an amount of compensation:
  - (i) to a person under section 1063; and
  - (ii) for a relevant AFCA determination that required payment of an amount by another person (the **AFCA member**) who is, or was, a member of the AFCA scheme; and
- (b) the AFCA member is (or has become) a Chapter 5 body corporate;

the CSLR operator is subrogated, to the extent of that amount of compensation, to any rights and remedies that the person may have, in relation to the relevant AFCA determination, that are recognised by an officer of the Chapter 5 body corporate.

## **Division 3—Reimbursement of unpaid AFCA fees**

### **1069B Payment of AFCA's unpaid fees**

- (1) The CSLR operator must pay to AFCA an amount equal to AFCA's unpaid fees for a month starting on or after the accumulation recovery day if AFCA has notified the CSLR operator of those fees in accordance with subsection 1058B(1).
- (2) The CSLR operator must pay the amount to AFCA as soon as reasonably practicable after AFCA's notification to the CSLR operator of those fees.

- (3) However, the CSLR operator must not pay an amount under this section before:
- (a) the start of the first levy period; or
  - (b) any later day prescribed by regulations made for the purposes of this paragraph.

#### **1069C Payment of AFCA’s accumulated unpaid fees**

- (1) The CSLR operator must pay to AFCA an amount equal to AFCA’s accumulated unpaid fees if AFCA has notified the CSLR operator of those fees in accordance with subsection 1058B(3).
- (2) The CSLR operator must pay the amount to AFCA as soon as reasonably practicable after AFCA’s notification to the CSLR operator of those fees.
- (3) However, the CSLR operator must not pay an amount under this section before:
- (a) the start of the first levy period; or
  - (b) any later day prescribed by regulations made for the purposes of this paragraph.

### **Division 4—Powers, reporting and information sharing**

#### **Subdivision A—Powers of CSLR operator**

##### **1069D Power to obtain information and documents**

- (1) If the CSLR operator has reason to believe that a person is capable of giving information or producing documents relevant to an application for compensation under this Part, the CSLR operator may, by written notice to the person, require the person:
- (a) to give to the CSLR operator, by writing, any such information; or
  - (b) to produce to the CSLR operator such documents or copies of such documents as are stated in the notice;
- in the manner and within the period specified in the notice.
- (2) The period specified in a notice given under subsection (1) must be at least 14 days after the day the notice is given.

- (3) If documents (whether originals or copies) are so produced, the CSLR operator:
- (a) may take possession of, and may make copies of, or take extracts from, the documents; and
  - (b) may keep the documents for as long as is necessary for the purpose of dealing with the application; and
  - (c) must, while keeping the documents, permit a person who would be entitled to inspect any one or more of them (if the documents were not in the possession of the CSLR operator) to inspect at all reasonable times such of the documents as that person would be so entitled to inspect.

- (4) A person must not fail to comply with a requirement made by the CSLR operator under subsection (1).

Penalty: 30 penalty units.

- (5) Subsection (4) is an offence of strict liability.

- (6) Subsection (4) does not apply to the extent that the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

- (7) If a person who is, or was, a member of the AFCA scheme fails, without a reasonable excuse, to comply with a requirement made by the CSLR operator under subsection (1), the CSLR operator must notify AFCA and ASIC of the person's failure to comply with the notice.

- (8) The CSLR operator must not require ASIC to give information or produce documents under this section.

Note: For information sharing between ASIC and the CSLR operator, see subparagraph 127(4)(aa)(ia) of the *Australian Securities and Investments Commission Act 2001*.

## Subdivision B—Information sharing and reporting

### 1069E Authorised use or disclosure of information

A CSLR staff member may use or disclose information or documents obtained by a CSLR staff member under or for the purposes of this Part if:

- (a) the use or disclosure is for the purposes of:
  - (i) this Part; or
  - (ii) Part 7.10A; or
  - (iii) the *Financial Services Compensation Scheme of Last Resort Levy Act 2023*; or
  - (iv) the *Financial Services Compensation Scheme of Last Resort Levy (Collection) Act 2023*; or
- (b) the use or disclosure is to:
  - (i) ASIC; or
  - (ii) AFCA; or
  - (iii) the Information Commissioner; or
  - (iv) the Commissioner of Taxation;for the purposes of assisting the entity or person to perform its functions or exercise its powers.

### 1069F Reporting by CSLR operator

#### *Reporting compensation payments*

- (1) If the CSLR operator pays an amount of compensation:
  - (a) to a person under section 1063; and
  - (b) for a relevant AFCA determination that required payment of an amount by an entity or body (the **AFCA member**) who is, or was, a member of the AFCA scheme;the CSLR operator must, as soon as reasonably practicable, notify ASIC, in writing, of details about the AFCA member and the AFCA member's failure to pay the amount required by the relevant AFCA determination.
- (2) If the CSLR operator:
  - (a) pays an amount of compensation:

- (i) to a person under section 1063; and
  - (ii) for a relevant AFCA determination that required payment of an amount by another person (the **AFCA member**) who is, or was, a member of the AFCA scheme; and
- (b) becomes aware that the AFCA member is a Chapter 5 body corporate while the determination is in force;
- the CSLR operator must, as soon as reasonably practicable, notify an officer of the Chapter 5 body corporate, in writing, of the amount of compensation paid.

*Reporting revised claims, fees and costs estimates that exceed cap*

- (3) If a revised claims, fees and costs estimate for a levy period and a sub-sector comes into force that could cause the sub-sector levy cap for the levy period and the sub-sector to be exceeded (or further exceeded), the CSLR operator must notify the Minister of this as soon as practicable.
- (4) A notice to the Minister under subsection (3) must include the information (if any) prescribed by regulations made for the purposes of this subsection.

### **1069G Publishing reports**

- (1) The CSLR operator must, as soon as reasonably practicable after the end of a levy period, prepare a report for the levy period that contains information about the matters prescribed by regulations made for the purposes of this subsection.
- (2) The CSLR operator must publish the report on its website.

### **Subdivision C—Powers of the Minister**

#### **1069H Ministerial determination**

*Ministerial determination*

- (1) Subsection (2) applies if the Minister is notified under subsection 1069F(3) that a revised claims, fees and costs estimate for:

- (a) a levy period; and
  - (b) a sub-sector (the *primary sub-sector*);
- could cause the sub-sector levy cap for the levy period and the primary sub-sector to be exceeded (or further exceeded).
- (2) The Minister may, by legislative instrument, make a determination for the levy period and the primary sub-sector dealing with one or more of the matters mentioned in subsections (3) to (5).

Note: The matter in subsection (5) involves the determination specifying further sub-sectors on which special levy will be imposed.

*Manner of payment*

- (3) A determination made under subsection (2) may provide that an amount of compensation payable by the CSLR operator to a person in a specified class of persons must be paid in specified instalments over a specified period of time.

*Special levy for just the primary sub-sector*

- (4) For the purposes of paragraph 8(3)(b) of the *Financial Services Compensation Scheme of Last Resort Levy Act 2023*, a determination made under subsection (2) of this section may:
- (a) specify that levy needs to be imposed by subsection 8(3) of that Act for the levy period and the primary sub-sector; and
  - (b) specify the total amount of levy that needs to be imposed by subsection 8(3) of that Act across all persons for the levy period and the primary sub-sector, which must not exceed the difference between:
    - (i) the revised claims, fees and costs estimate (referred to in subsection (1) of this section) for the levy period and the primary sub-sector; and
    - (ii) the total amount of levy already paid as worked out under subsection (6) of this section.

*Special levy for several sub-sectors not just the primary sub-sector*

- (5) For the purposes of paragraph 9(b) of the *Financial Services Compensation Scheme of Last Resort Levy Act 2023*, a determination made under subsection (2) of this section may:



- (a) specify that levy needs to be imposed by section 9 of that Act (*special levy*) for the levy period if the Minister is satisfied that imposing special levy:
  - (i) is necessary due to the number of persons accepting amounts of compensation under section 1069 of this Act for the levy period and the primary sub-sector, and due to the size of the sum of those amounts; and
  - (ii) is the most effective way of enabling payment of those amounts to those persons in a timely manner; and
- (b) for each of one or more specified sub-sectors—specify a total amount of special levy that needs to be imposed for the levy period across all members of the specified sub-sector if the Minister has had regard to:
  - (i) the impact that imposing that total amount of special levy may have on the financial sustainability and viability of the specified sub-sector; and
  - (ii) the impact that imposing that total amount of special levy across all members of the specified sub-sector may have on the financial system more broadly; and
- (c) specify the sum of the total amounts of special levy specified under paragraph (b) of this subsection, which must not exceed the difference between:
  - (i) the revised claims, fees and costs estimate (referred to in subsection (1) of this section) for the levy period and the primary sub-sector; and
  - (ii) the total amount of levy already paid as worked out under subsection (6) of this section.

*Working out the total amount of levy already paid*

- (6) For the purposes of subparagraph (4)(b)(ii) or (5)(c)(ii), work out the sum of:
  - (a) the total amount of levy paid that was earlier imposed by section 8 of the *Financial Services Compensation Scheme of Last Resort Levy Act 2023* across all persons for the levy period and the primary sub-sector; and
  - (b) the total amount of levy paid that was earlier imposed by section 9 of that Act across all persons for all sub-sectors in

relation to any earlier revised claims, fees and costs estimate for the levy period and the primary sub-sector.

## **Division 5—Regulating the CSLR operator**

### **1069J Obligation to comply with mandatory requirements**

The CSLR operator must ensure that the mandatory requirements for the CSLR operator under section 1062 are complied with.

### **1069K ASIC may issue regulatory requirements**

ASIC may, by legislative instrument, issue to the CSLR operator regulatory requirements relating to compliance with the mandatory requirements for the CSLR operator under section 1062.

### **1069L General directions to CSLR operator**

*Notice of intention to issue a direction*

- (1) If ASIC considers that the CSLR operator has not done all things reasonably practicable to ensure compliance with:
  - (a) the mandatory requirements for the CSLR operator under section 1062; or
  - (b) a condition of the authorisation of the CSLR operator imposed by the Minister (see paragraph 1060(4)(b)); or
  - (c) regulatory requirements issued under section 1069K;ASIC may give the CSLR operator written notice that it intends to give the CSLR operator a specified direction under this section.
- (2) The notice must set out:
  - (a) the specific measures that the direction will require the CSLR operator to take to comply with the requirements or condition; and
  - (b) the reasons for ASIC's intention to give the direction.

*Issuing a direction*

- (3) If, after receiving the notice:

- (a) the CSLR operator does not take those specific measures;  
and
  - (b) ASIC still considers that it is appropriate to give the direction to the CSLR operator;
- ASIC may give the CSLR operator the direction, in writing, with a statement setting out the reasons for giving the direction.
- (4) The direction must deal with the time by which, or the period during which, it is to be complied with. The time or period must be reasonable.
  - (5) A direction made under this section is not a legislative instrument.

*Compliance*

- (6) The CSLR operator must comply with a direction made under this section.
- Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).
- (7) If the CSLR operator fails to comply with the direction, ASIC may apply to the Court for, and the Court may make, an order that the CSLR operator comply with the direction.

*Varying or revoking a direction*

- (8) ASIC may vary a direction made under this section by giving written notice to the CSLR operator.
- (9) The direction has effect until ASIC revokes it by giving written notice to the CSLR operator.
- (10) ASIC may revoke the direction, by giving written notice to the CSLR operator, if, at the time of revocation, ASIC considers that the direction is no longer necessary or appropriate.

## Division 6—Financial matters

### 1069M Costs for first levy period

*Estimate of costs for first levy period*

- (1) The CSLR operator may, by notifiable instrument made at any time before the start of the first levy period, determine for the first levy period and a sub-sector an estimate that is the sum of:
  - (a) the specified amount equal to what the CSLR operator reasonably believes (having regard to actuarial principles) will be the total amount of compensation payable under section 1063:
    - (i) during the first levy period; and
    - (ii) for the sub-sector;other than any such compensation relating to pre-CSLR complaints; and
  - (b) the specified amount equal to what the CSLR operator reasonably believes (having regard to actuarial principles) will be the portion of the sum of the following that is attributable to the sub-sector:
    - (i) the sum of AFCA's unpaid fees expected for each of the months ending on or after the accumulation recovery day but before the second levy period, other than any such fees relating to pre-CSLR complaints;
    - (ii) the capital reserve establishment contribution;
    - (iii) the CSLR operator's expected administrative costs for the first levy period.

Note: A single instrument may determine estimates for several sub-sectors.

- (2) The notifiable instrument must include each of the amounts referred to in subparagraphs (1)(b)(i) to (iii).

*Reconciliation of costs for first levy period*

- (3) The CSLR operator may, by notifiable instrument and as soon as reasonably practicable after the first levy period, determine the revised costs for the first levy period and a sub-sector by calculating the sum of the following amounts:

- (a) the total amount of compensation paid under section 1063 during the first levy period for the sub-sector, other than any such compensation relating to pre-CSLR complaints;
- (b) the amount equal to the portion of the sum of the following amounts that the CSLR operator reasonably believes (having regard to actuarial principles) are attributable to the sub-sector:
  - (i) the sum of AFCA's unpaid fees for each of the months ending on or after the accumulation recovery day but before the second levy period, other than any such fees relating to pre-CSLR complaints;
  - (ii) the capital reserve establishment contribution;
  - (iii) the CSLR operator's administrative costs for the first levy period.

Note: A single instrument may determine revised costs for several sub-sectors.

#### **1069N Payment to the CSLR operator of amount for the first levy period for the scheme**

- (1) The Commonwealth must pay to the CSLR operator the amount mentioned in subsection (2) for the first levy period for the following purposes:
  - (a) the CSLR operator paying compensation under section 1063 during the first levy period, other than any such compensation relating to pre-CSLR complaints;
  - (b) the CSLR operator paying AFCA's unpaid fees for each month ending on or after the accumulation recovery day but before the second levy period, other than any such fees relating to pre-CSLR complaints;
  - (c) the CSLR operator establishing approximately one third of the capital reserve (within the meaning of the *Financial Services Compensation Scheme of Last Resort Levy (Collection) Act 2023*);
  - (d) the CSLR operator paying the CSLR operator's administrative costs for the first levy period.

- (2) For the purposes of subsection (1), the amount is equal to the sum of each estimate determined under subsection 1069M(1) for the first levy period and a sub-sector.

**1069P Payment to the CSLR operator of amounts equal to levy**

- (1) The Commonwealth must pay to the CSLR operator an amount equal to each amount received by ASIC, on behalf of the Commonwealth, by way of:
- (a) an instalment of levy (within the meaning of the *Financial Services Compensation Scheme of Last Resort Levy (Collection) Act 2023*); or
  - (b) late payment penalty (within the meaning of that Act); or
  - (c) shortfall penalty (within the meaning of that Act).
- (2) The Consolidated Revenue Fund is appropriated for the purposes of subsection (1).

**1069Q Application of money by CSLR operator**

- (1) The money of the CSLR operator is to be applied only:
- (a) to pay compensation under section 1063; and
  - (b) to pay AFCA's unpaid fees under section 1069B; and
  - (c) to pay AFCA's accumulated unpaid fees under section 1069C; and
  - (d) to pay the CSLR operator's administrative costs; and
  - (e) to reimburse to ASIC the costs that ASIC has notified to the CSLR operator under subsection 9(4) of the *Financial Services Compensation Scheme of Last Resort Levy (Collection) Act 2023*; and
  - (f) to establish and restore the capital reserve (within the meaning of the *Financial Services Compensation Scheme of Last Resort Levy (Collection) Act 2023*).
- (2) Subsection (1) does not prevent investment of money.

**1069R Investment by CSLR operator**

The CSLR operator must not invest money of the CSLR operator unless:

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- (a) the money is not immediately required for the purposes mentioned in paragraphs 1069Q(1)(a) to (e); and
- (b) the money is invested:
  - (i) on deposit with an ADI (within the meaning of the *Banking Act 1959*), including a deposit evidenced by a certificate of deposit; or
  - (ii) in securities of, or securities guaranteed by, the Commonwealth, a State or a Territory.

### **1069S Recovery of overpayments**

- (1) If:
  - (a) the CSLR operator pays an amount of compensation to a person under, or purportedly under, this Part; and
  - (b) the amount paid exceeds the amount (if any) properly payable to the person under this Part;the amount of the excess is recoverable by the CSLR operator as a debt due to the CSLR operator by action against the person in the Federal Court or the Federal Circuit and Family Court of Australia (Division 2).
- (2) An amount equal to the excess may alternatively be deducted from any other amount of compensation payable under this Part to, or for the benefit of, the person.

## Part 2—Other amendments

### *Australian Securities and Investments Commission Act 2001*

#### 4 After paragraph 12A(1)(b)

Insert:

- (ba) the *Financial Services Compensation Scheme of Last Resort Levy (Collection) Act 2023*;

#### 5 After subparagraph 127(4)(aa)(i)

Insert:

- (ia) the CSLR operator (within the meaning of the *Corporations Act 2001*); or

### *Corporations Act 2001*

#### 6 After subsection 601AB(1B)

Insert:

- (1C) ASIC may also decide to deregister a company if the company is liable to pay an instalment of levy (within the meaning of the *Financial Services Compensation Scheme of Last Resort Levy (Collection) Act 2023*) and the company has not paid in full at least 12 months after the due date for payment:
  - (a) the amount of the instalment of levy; and
  - (b) the amount of any late payment penalty payable in relation to the instalment of levy; and
  - (c) the amount of any shortfall penalty payable in relation to the instalment of levy.

#### 7 After subsection 601AH(1A)

Insert:

- (1B) ASIC may reinstate the registration of a company deregistered under subsection 601AB(1C) if:
  - (a) ASIC receives an application in relation to the reinstatement of the company's registration; and



- (b) the instalments of levy (within the meaning of the *Financial Services Compensation Scheme of Last Resort Levy (Collection) Act 2023*) imposed on the company are paid in full; and
- (c) the amount of any late payment penalty payable in relation to the instalments of levy is paid in full; and
- (d) the amount of any shortfall penalty payable in relation to the instalments of levy is paid in full.

## **8 After paragraph 915B(1)(f)**

Insert:

- ; or (g) is liable to pay an instalment of levy (within the meaning of the *Financial Services Compensation Scheme of Last Resort Levy (Collection) Act 2023*) and has not paid in full at least 12 months after the due date for payment:
  - (i) the amount of the instalment of levy; and
  - (ii) the amount of any late payment penalty in relation to the instalment of levy; and
  - (iii) the amount of any shortfall penalty payable in relation to the instalment of levy.

## **9 After subsection 915B(1A)**

Insert:

- (1B) ASIC must cancel an Australian financial services licence held by an individual, by giving written notice to the individual, if:
  - (a) the individual is required to pay an amount to another person in accordance with a relevant AFCA determination; and
  - (b) the CSLR operator has paid, under section 1063, an amount of compensation to the other person for the relevant AFCA determination.

## **10 After paragraph 915B(2)(e)**

Insert:

- ; or (f) in the case of a partnership that is liable to pay an instalment of levy (within the meaning of the *Financial Services Compensation Scheme of Last Resort Levy (Collection) Act 2023*)—the following have not been paid in full at least 12 months after the due date for payment:
-

- (i) the amount of the instalment of levy;
- (ii) the amount of any late payment penalty in relation to the instalment of levy;
- (iii) the amount of any shortfall penalty payable in relation to the instalment of levy.

#### **11 After subsection 915B(2A)**

Insert:

- (2B) ASIC must cancel an Australian financial services licence held by a partnership, by giving written notice to the partnership, if:
- (a) one or more of the partners is required to pay an amount to a person in accordance with a relevant AFCA determination; and
  - (b) the CSLR operator has paid, under section 1063, an amount of compensation to the person for the relevant AFCA determination.

#### **12 After paragraph 915B(3)(e)**

Insert:

- ; or (f) the body is liable to pay an instalment of levy (within the meaning of the *Financial Services Compensation Scheme of Last Resort Levy (Collection) Act 2023*) and has not paid in full at least 12 months after the due date for payment:
- (i) the amount of the instalment of levy; and
  - (ii) the amount of any late payment penalty in relation to the instalment of levy; and
  - (iii) the amount of any shortfall penalty payable in relation to the instalment of levy.

#### **13 After subsection 915B(3A)**

Insert:

- (3B) ASIC must cancel an Australian financial services licence held by a body corporate, by giving written notice to the body, if:
- (a) the body is required to pay an amount to a person in accordance with a relevant AFCA determination; and

- (b) the CSLR operator has paid, under section 1063, an amount of compensation to the person for the relevant AFCA determination.

#### **14 After paragraph 915B(4)(e)**

Insert:

- ; or (f) in the case of a licensee that is a single legal entity under section 761FA of this Act and also liable to pay an instalment of levy (within the meaning of the *Financial Services Compensation Scheme of Last Resort Levy (Collection) Act 2023*)—the following have not been paid in full at least 12 months after the due date for payment:
  - (i) the amount of the instalment of levy;
  - (ii) the amount of any late payment penalty in relation to the instalment of levy;
  - (iii) the amount of any shortfall penalty payable in relation to the instalment of levy.

#### **15 At the end of section 915B**

Add:

- (4B) ASIC must cancel an Australian financial services licence held by the trustees of a trust, by giving written notice to the trustees, if:
  - (a) the trustees of the trust are required to pay an amount to a person in accordance with a relevant AFCA determination; and
  - (b) the CSLR operator has paid, under section 1063, an amount of compensation to the person for the relevant AFCA determination.

#### **16 After paragraph 920A(1)(j)**

Insert:

- (ja) all of the following apply:
  - (i) an individual who holds an Australian financial services licence, a partner in a partnership, a body corporate or a trustee of a trust is required to pay an amount in accordance with a relevant AFCA determination;

- (ii) the CSLR operator has paid, under section 1063, an amount of compensation for the relevant AFCA determination;
- (iii) at the time the payment is made by the CSLR operator, the person is the individual licensee, a partner in the partnership, an officer of the body corporate or the trustee of the trust; or

### 17 After paragraph 1317C(gdc)

Insert:

- (gdca) a decision by ASIC under subsection 915B(1B), (2B), (3B) or (4B) (immediate cancellation of an Australian financial services licence); or

### 18 In the appropriate position in Schedule 3

Insert:

- Subsection 1069L(6)
- (a) for an individual—100 penalty units for each day, or part of a day, in respect of which the offence is committed; and
  - (b) for a body corporate—1,000 penalty units for each day, or part of a day, in respect of which the offence is committed

### *National Consumer Credit Protection Act 2009*

### 19 At the end of subsection 54(1)

Add:

- ; or (e) in the case of a licensee that is liable to pay an instalment of levy (within the meaning of the *Financial Services Compensation Scheme of Last Resort Levy (Collection) Act 2023*)—the following have not been paid in full at least 12 months after the due date for payment:
  - (i) the amount of the instalment of levy;
  - (ii) the amount of any late payment penalty in relation to the instalment of levy;
  - (iii) the amount of any shortfall penalty payable in relation to the instalment of levy.

## **20 After subsection 54(1A)**

Insert:

- (1B) ASIC must cancel a licensee's licence if:
- (a) the licensee is required to pay an amount to a person in accordance with a relevant AFCA determination (within the meaning of the *Corporations Act 2001*); and
  - (b) the CSLR operator (within the meaning of that Act) has paid, under section 1063 of that Act, an amount of compensation to the person for the relevant AFCA determination.

## **21 After paragraph 80(1)(fb)**

Insert:

- (fba) if all of the following apply:
- (i) an individual who holds a licence, a partner in a partnership, a body corporate or a trustee of a trust is required to pay an amount in accordance with a relevant AFCA determination (within the meaning of the *Corporations Act 2001*);
  - (ii) the CSLR operator (within the meaning of that Act) has paid, under section 1063 of that Act, an amount of compensation for the relevant AFCA determination;
  - (iii) at the time the payment is made by the CSLR operator, the person is the individual licensee, a partner in the partnership, an officer (within the meaning of that Act) of the body corporate or the trustee of the trust; or

## **22 Before paragraph 327(1)(a)**

Insert:

- (aa) a decision of ASIC under subsection 54(1B) (which deals with immediate cancellation of a licence); or

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*[Minister's second reading speech made in—  
House of Representatives on 8 March 2023  
Senate on 22 March 2023]*

(17/23)

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34      *Treasury Laws Amendment (Financial Services Compensation Scheme  
of Last Resort) Act 2023*      No. 46, 2023