

EXPOSURE DRAFT EXPLANATORY STATEMENT

Corporations Act 2001

Corporations Amendment (Financial Services Compensation Scheme of Last Resort) Regulations 2022

Section 1364(1) of the *Corporations Act 2001* 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.

The purpose of the *Corporations Amendment (Financial Services Compensation Scheme of Last Resort) Regulations 2022* (the Regulations) is to support the amendments made by Schedule 3 to the *Financial Sector Reform Act 2022* (the Act), which establishes the Compensation Scheme of Last Resort (CSLR).

The CSLR will provide compensation to eligible consumers where a determination issued in their favour by the Australian Financial Complaints Authority (AFCA) remains unpaid by the relevant financial firm and the determination relates to an in-scope financial product or service. The Act provides that the Minister may authorise a company to operate the CSLR, the CSLR operator.

A levy will be imposed on the financial services industry to fund the scheme. The CSLR levy framework is provided by the *Financial Services Compensation Scheme of Last Resort Levy Act 2022* and the *Financial Services Compensation Scheme of Last Resort Levy (Collection) Act 2022*.

Under the CSLR levy framework, the CSLR operator will be responsible for determining the amounts to be levied based on actuarial analysis of information on expected claims. The levy will be payable by firms who are members of a sub-sector within the meaning of the *ASIC Supervisory Cost Recovery Act 2017*. The *Financial Services Compensation Scheme of Last Resort Levy Regulations 2022* prescribes the entities that are subject to levy and how levies are calculated. The amount of levy imposed will be subject to a sub-sector levy cap. The sub-sector cap can only be exceeded through a Ministerial determination.

The Regulations amend the *Corporations Regulations 2001* to prescribe matters related to the CSLR operator's reporting requirements, as outlined in the *Corporations Act 2001*. Particularly, they detail the information that the CSLR operator must include in its report at the end of each levy period; and the information that the CSLR operator must provide to the Minister where the value of claims in a financial year is set to exceed the sub-sector levy cap for one or more sub-sectors.

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 commences on the day after this instrument is registered on the Federal Register of Legislation or the day Schedule 3 to the Act commences, whichever is later.

Details of the Corporations Amendment (Financial Services Compensation Scheme of Last Resort) Regulations 2022

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 2022* (the Regulations).

Section 2 – Commencement

The Regulations commence on the day after the instrument is registered on the Federal Register of Legislation or the day Schedule 3 to the Act commences, whichever is later.

Section 3 – Authority

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

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 a Schedule to this instrument has effect according to its terms.

Schedule 1 – Financial services compensation scheme of last resort

Schedule 1 to the Regulations amend the *Corporations Regulations 2001* (Corporations Regulations) to prescribe matters related to the CSLR operator's reporting requirements, as outlined in the *Corporations Act 2001* (Corporations Act).

Reporting by the CSLR operator if the sub-sector levy cap could be exceeded

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

If the annual levy collected is insufficient or likely to be insufficient to meet the actual or estimated claims payable for the levy period, the CSLR operator can determine a revised estimate of claims, fees, and costs and impose a 'further levy' up to the sub-sector levy cap of \$20 million.

The levy framework also contains a special funding mechanism ('special levy') where the Minister may determine that a special levy be imposed to cover the shortfall for the levy period in which the revised estimate of claims, fees, and costs exceeds the sub-sector levy cap. The CSLR operator must notify the Minister of the revised estimate of costs, fees, and claims in writing as soon as practicable.

Item 1 of Schedule 1 inserts Part 7.10B in the Corporations Regulations. Regulation 7.10B.50 provides the regulations are made for the purposes of sub-section 1069F(4) of the Corporations Act and prescribes information that the CSLR operator must

include in its notice to the Minister where the revised estimate of claims, fees and costs exceeds the sub-sector levy cap for the levy period.

Sub-regulations 7.10B.50(a) and (b) provide that the notice must include the number of applications for compensation payments that underpin the revised estimate; and the sum of the amounts of compensation that would be payable under the scheme for those applications. Sub-regulation 7.10B.50(c) provides that the notice must also include the portion of sum of AFCA's unpaid fees that is attributable to the sub-sector(s). The purpose of this information is to assist the Minister in their decision-making process. The notice will provide the Minister with the facts that led to a revised estimate being made which will cause the sub-sector cap to be exceeded.

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

Regulation 7.10B.55 provides the regulations are made for the purpose of subsection 1069G(1) of the Corporations Act and prescribes information that the CSLR operator must report at the end of each levy period. The CSLR operator must publish the report with the prescribed information on its website at the end of each levy period.

The published report must contain information about the following matters:

- the CSLR operator's estimate of the costs for the scheme, including any estimate of the claims, fees, and costs for the levy period and the approach used and relied upon to determine these estimates;
- the number of applications received during the levy period (including applications that were deemed ineligible under the scheme);
- the number and value of payments of compensation made during the levy period;
- the number of applications received during the levy period that remain outstanding at the time of preparation of the report;
- for the levy period, the average amount of time taken by the CSLR operator to notify a complainant that they are eligible or not eligible for compensation under the scheme;
- information about the kinds of products or services covered by the relevant AFCA determinations to which the applications received during the levy period relate;
- information about any patterns or trends identified amongst the applications received during the levy period;
- the number of notifications made to the Minister during the levy period about a revised estimate of costs, fees, and claims that came into force and could exceed a sub-sector levy cap;
- the total amount of levy paid by each sub-sector during the levy period;
- details of any determination made by the Minister during the levy period about an imposition of a special levy that is spread across several sub-sectors; and details about the levy paid by each of those sub-sectors.