Insurance Council
of Australia

18 February 2026
The Treasury
Langton Crescent
Parkes ACT 2600

By email: CSLR@treasury.gov.au

To whom this may concern,

Consultation on enhancing professional indemnity insurance

Thank you for the opportunity to comment on behalf of our members on the consultation paper *Enhancing the effectiveness of financial service professional indemnity insurance* (the Consultation paper)

The Insurance Council of Australia (Insurance Council) is the representative body of the general insurance industry in Australia. Our members represent approximately 85 percent of total premium income written by private sector general insurers. The views represented in this submission are drawn from industry experts with extensive knowledge and experience in professional indemnity (PI) insurance.

As Treasury is aware, the Compensation Scheme of Last Resort (CSLR or the Scheme) is experiencing a significant funding shortfall less than 3 years from its inception.

While we note the paper signals further consultation on the CSLR in 2026, insurers are concerned that the current focus may be on expanding the role of PI insurance to cover losses to retail customers arising from high-risk investments, rather than focusing on tackling the underlying structural challenges of the CSLR and ways to prevent these large event losses occurring in the future.

Attempting to transfer the cost of CSLR claims onto PI insurance will be ineffectual in addressing the root causes of the current financial problems of the Scheme, or in preventing consumer losses from high-risk investments.

To address the current financial problems facing the CSLR and ensure its long-term sustainability, significant reform of the Scheme is urgently required. In addition, there must be greater regulation and oversight of high-risk financial products and the Australian Financial Service License holders (Licensees) who provide these products, as this is the source of the majority of claims on the CSLR.

Without these reasonable changes it is inevitable the CSLR will continue to face significant financial sustainability challenges.

Our submission addresses the core themes and questions in the Consultation paper as well as provide an outline of additional reforms that will improve the financial position of the CSLR.

The Insurance Council welcomes the opportunity to engage further with Treasury on these important reforms.

How professional indemnity insurance operates

Some of the content of the Consultation paper indicates there may be some confusion or lack of nuanced understanding regarding PI insurance, its role, and how the claims process operates.

Therefore, to assist Treasury with their consultation, we wish to provide additional information on the role and operation of PI insurance.

Our submission also addresses some inaccuracies identified in the Consultation paper relevant to addressing the core issues facing the CSLR.

The role of professional indemnity insurance

To consider the effectiveness of PI insurance it is important to first understand the role and purpose of the product.

The primary role and purpose of PI insurance is to provide financial protection to the policyholder (the professional). PI insurance is a financial risk management tool for policyholders designed to cover professional practice risks and is not a consumer protection tool.

Like other general insurance products, the policyholder chooses to purchase PI insurance to manage their financial risks. PI insurance is not designed to provide a source of general financial protection to third parties and consumers. Nor is it designed to act as a financial safety net for consumers that have suffered a financial loss.

Furthermore, it is not the role or purpose of PI insurance to be a “first line of defence” to fund consumer compensation and support the broader sustainability and purpose of the CSLR as is suggested in the Consultation paper.

What does professional indemnity insurance cover

PI insurance provides protection to the policyholder against claims for alleged negligence or breach of duty arising from an act or omission in the performance of the policyholder’s professional duties.

While PI insurance is designed to cover claims arising from certain types of professional negligence, some types of negligence or conduct are typically not covered under a PI insurance policy.

PI insurance will generally not cover claims that involve:

- Systemic prudential failures
- Deliberate or fraudulent acts
- Criminal conduct
- Claims from known but undisclosed circumstances
- Claims arising after the runoff period when a firm is insolvent.
- Breaches of obligations owed to employees

PI insurance will also not cover the proportion of claims that go beyond the monetary coverage limit of the insured’s policy.

These elements account for a significant proportion of claims currently entering the CSLR and we note that these are predominately claims involving financial planners.

As outlined, PI insurance was never intended to act as a financial failsafe for consumers. Consequently, PI insurance is not designed or equipped to handle the types claims currently flowing into the CSLR.

Market capacity

In addition to be not being designed to handle many of the types of claims received by the CSLR, there is not currently capacity within the PI insurance market to cover the volume and quantum of claims in the CSLR.

The Gross Written Premium for PI insurance for financial planning services in Australia has ranged between $45M- $65M annually in the last 3 years (excluding large institutions). At the same time, claims arising from the CSLR in the coming 2025-26 levy period are projected to reach well over $60M.[1] Going forward, the 2027 financial year funding estimate for the CSLR is $137.5M.[2] This figure does not include potential compensation payable by the CSLR in relation to claims of the Shield and First Guardian failures, which Scheme actuaries project could add a further $125M to the initial estimate.[3]

Based on this data, hypothetically, if historical CSLR claims were to be absorbed by the private PI insurance market, then insurers would have to more than double the cost of insurance premiums, making PI insurance unaffordable for many Licensees, and potentially leading to a lack of financial planners available for Australia's ageing population.

The PI insurance market

The Insurance Council is of the view that the PI insurance market for Licensees is operating efficiently and working well.

As outlined in the Consultation paper the PI insurance market has softened in the past 2 years.

Insurers advise that currently, PI insurance for Licensees (including financial advisors/planners) is readily available, that this section of the market is competitive, coverage provided under PI insurance policies remains broad, and that generally only Licensees with a poor or adverse claims history, regulatory compliance issues or whose business practices involve high-risk financial products would face challenges obtaining insurance cover.

More broadly, insurers advise any Licensee or business with a poor claims history, whether in a hard or soft market, will be subject to tighter underwriting conditions, more restricted coverage and/or higher premiums, which is appropriate to ensure premiums and coverage provided are reflective of risk and likelihood of claims.

PI insurance and external administration – CSLR subrogation rights

A considerable focus of the Consultation paper is devoted to the impact of external administration on PI insurance, including enhancing subrogation rights of the CSLR administrator to recover from insurers.

The Consultation paper also includes feedback from some external stakeholders that there be reforms to ensure that the CSLR operator can actively enforce subrogation rights to pursue recovery under PI insurance policies, and for legislative change to require firms with unpaid AFCA claims to disclose their PI insurance arrangements.

The Insurance Council queries the practical benefit to the CSLR of expanding subrogation rights given only an AFCA determination triggers the right to compensation under the CSLR.

If there is insurance available that responds to an AFCA determination, then a PI insurer would pay the claim (provided they were notified of the claim, and it was covered under the policy). Given this, providing subrogation rights to the CSLR administrator where there is no insurance coverage for a claim or where the coverage amount has been exhausted would be of little practical benefit.

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[1] UGC claims to expected to be $44,568,000, DASS claims projected to be $12,249,000, all others $3,837,000 Finity. Initial Estimate for 2025/26 33rd Levy Period Compensation Scheme of Last Resort. 2025. Page 38 and page 41.

[2] Compensation Scheme of Last Resort FY2027 initial levy estimate, 17 November 2025.

[3] Finity. 2025. Initial estimate for FY2027 (4th Levy Period) Compensation Scheme of Last Resort. Page 4.

The Consultation paper also notes stakeholder feedback that there should be legislative reform requiring firms with unpaid AFCA claims to disclose their PI insurance arrangements. It is insurers' experience that instances of AFCA members failing to notify their insurers of claims and an AFCA determination made against them are rare.

Therefore, like subrogation, legislation that required firms with unpaid AFCA determinations to disclose their PI insurance arrangements would have little impact in terms of addressing the volume of claims, financial pressures and funding shortfall currently being experienced by the CSLR.

Nonetheless, if lack of Licensee notification to their insurers of claims and AFCA determinations is a concern, this could be efficiently and effectively managed through other reforms, such as requiring AFCA members to notify their insurers of AFCA disputes as a condition of their licensing requirements, as opposed to introducing requirements to inform the CSLR administrator of PI insurance arrangements in the event a AFCA determination against a licensee remains unpaid. This should be part of the process of better regulatory oversight, rather than attempting to redefine the boundaries of PI insurance.

The role of industry bodies

The Consultation paper requests feedback on the role industry bodies could play in providing Licensees with access to comprehensive PI insurance (question 9).

As is outlined in the Consultation paper, some industry sectors have adopted alternative PI insurance models. For example, state and territory legal profession bodies have adopted a model involving a single, mandatory PI insurance policy which all practitioners must purchase as a condition of holding a practising certificate. These models have been highly effective in ensuring both ongoing access to PI insurance for legal practitioners as well and providing adequate coverage for claims made against them. This model is supported by ongoing training and continuing professional development and extensive enforceable professional conduct rules overseen by active legal practice boards.

Similar models could be explored by the financial services industry. The viability of these alternate insurance arrangements is likely to be heavily dependent on implementing and uplifting practice standards and conduct that prevent claims from occurring.

Other observations

To assist Treasury, the Insurance Council provides the following feedback and comments in relation to some of the information contained in the Consultation paper and about the operation of PI insurance more broadly.

- *Reliability and Responsiveness of PI Insurance:* Page 3 of the Consultation paper states stakeholder feedback that PI insurance must be fit for purpose and that exclusions for certain products, restrictive policy terms and disputes over quantum often leave consumers uncompensated even when insurance exists.

  We wish to clarify that exclusions of cover and policy terms that may restrict cover in certain circumstances are commonly used across multiple insurance products (not just PI insurance) and play an important role in maintaining insurance affordability.

  Without exclusions and policy terms that provide limitations of coverage the cost of insurance products would be considerably more expensive and, in some cases, coverage would not be available and therefore should not viewed as an indication that PI insurance is not fit-for-purpose.

- *Funding Fairness:* the Consultation paper mentions stakeholder feedback that PI insurance has been raised as a measure that aligns with ensuring the scheme truly operates as a compensation scheme of last resort mechanism, with stakeholders advocating that cross-subsidisation should be limited as much as possible.

In relation to this stakeholder feedback, the Insurance Council reiterates that PI insurance is not designed to nor is its purpose to support government insurance schemes like the CSLR. Equally it is not its purpose or role to ensure funding fairness of the CSLR.

- *Limit Consumer Impacts:* We note the consumer groups' feedback that the CSLR must remain accessible when insurance fails, but that reducing the frequency of such failures is critical to long-term sustainability (of the CSLR).

  The focus on addressing insurance 'failures' in order to ensure sustainability of the CSLR is misconceived. Again, the purpose of PI insurance is to provide financial protection to the policyholder. It is not and never can be the role of PI insurance to ensure the sustainability of government created and designed compensation schemes such as the CSLR.

- *Excesses:* The Consultation paper states there is an emerging trend of PI insurance policies structuring excesses on an 'each and every' claimant basis whereby a separate excess applies to each claimant, particularly where AFCA claims are involved, while the policy coverage limit applies in aggregate across and not on an 'each and every claim basis'.

  Insurers advise that the application of excesses on an 'each and every claim' basis is not a common feature of the current PI market in Australia. Where these types of excesses have been applied has been in situations involving insureds with poor claims histories requiring insurers to apply more restrictive policy terms.

  The Consultation paper also states that insurers have sought to circumvent liability for small-value complaints received by AFCA.

  The application of excesses are a mechanism through which insurance customers can reduce the cost of their premiums, and are used across most classes of insurance, not just PI insurance. To this extent the excesses, like coverage limits and exclusions, play an important role in lowering the cost of insurance premiums while still maintaining levels of coverage.

- *PI insurance and external administration:* We note the Consultation paper makes reference to factors influencing whether an external administrator will pursue PI insurance claims. The Insurance Council wishes to clarify the distinction between pursuing a claim (for compensation) as opposed to making a claim on a PI insurance policy (for insurance coverage).

  PI insurance policies respond to claims by third parties that have sustained a financial loss (e.g. clients of Licensees). While PI insurance provides financial protection to the policy holder (through coverage for claims made against them by a third-party for breach of professional duty). PI insurance does not provide the policyholder or their appointed external administrators with a source of monetary compensation. Therefore, neither the policyholder nor their external administrators can pursue a PI insurance claim for compensation. Only a third-party who has sustained a financial loss due to the negligence or breach of duty of the policyholder can pursue compensation.

  Of course, and as identified in the Consultation paper, an external administrator retains the right to notify or make a claim for indemnity (coverage) on the PI insurance policy of the entity under their administration to cover a claim for compensation made by a third-party. Further, as a general rule provided the coverage and terms provided under the relevant PI insurance policy responded to the claim, the PI insurer would then pay the cost of the claim.

The current regulatory model

The Consultation paper seeks feedback on whether the existing regulatory model (current legislative obligations and ASIC regulatory guidance on PI insurance requirements of Licensees) is effective in reducing the risk that consumers are not compensated when a Licensee has insufficient financial resources to meet claims.

For a regulatory model to be effective, its design must be primarily focussed on creating a framework to reduce the risk of consumers sustaining financial loss arising from to the conduct of Licensees. Prevention of financial loss eliminates the need for compensation.

Given the volume of claims experienced by the CSLR, the vast majority of which relate to financial planners and managed investment schemes (MIS), the regulatory model needs to be reviewed and reformed to reduce incidence of these claims. This must be the focus of Treasury's consultation on the sustainability of the CSLR if the current financial problems facing the Scheme are to be addressed, as opposed to focussing on how the cost of these claims can be transferred from the CSLR to other parties. In this regard we welcome Treasury's recently announced review of oversight and governance of MIS, although we note the significantly short timeframe for engagement on that paper.

Reform to the regulatory model

The regulatory framework should be designed to prevent financial losses that result in claims against Licensees. The following areas of reform could be undertaken that would significantly improve the effectiveness of the regulatory model and address outlying financial loss risk to consumers, which in turn would help reduce claims on the CSLR and without the need to retrofit the PI insurance market to solve this problem.

Most importantly the reforms presented will also prevent consumers from suffering financial loss in the first place.

Greater regulation of high-risk financial products is required

The Insurance Council and our members are of the view that the financial problems facing the CSLR are reflective of lack of appropriate regulation of the financial advice sector.

As outlined, the majority of claims flowing through to the CSLR relate to personal advice provided to retail customers, often in relation to investment in MIS.

MIS are particularly high-risk financial products often lie beyond a reasonable risk appetite for many retail clients. To this extent it is of no surprise that MIS continue to be the main source of financial investment failures and losses sustained by investors. Failures of MIS and the consequential catastrophic financial losses sustained to retail customers are far from being rare or unpredictable and should not be described as 'black swan' events.

Similarly, insurers advise that Licensees that provide these products also present high underwriting risk and pay higher premiums, and have more restricted cover or no cover for claims relating to MIS.

Therefore, the Insurance Council is of the view there is a very strong consumer protection policy case for greater regulation of MIS financial products and of the Licensees that offer them.

This regulation could include an outright ban on MIS for retail customers. Alternatively, Treasury could consider the creation of an ASIC approved list of investment products than can only be offered to retail customers.

Banning or placing greater restrictions on MIS products would significantly reduce claims on the CSLR as well and potentially reduce PI insurance premiums for the financial planning sector.

In addition, the Government should consider enhancing the regulatory oversight and enforcement mechanisms of ASIC (in respect to advice) and APRA (in respect to platforms used to provide financial products) particularly in relation to products offered to retail clients, MIS, and distribution processes.

The Insurance Council and our members would welcome the opportunity to engage with Treasury further to discuss these suggested reforms in more detail, including how they could be best designed and implemented to ease the pressure on the CSLR as well as protect consumers.

Structural reform to the CSLR is urgently needed

Structural reform and a fundamental redesign of the CSLR, in addition to reforms to prevent consumer financial losses, as opposed to transferring the cost of claims on the CSLR to PI insurance, is the only way to properly address the current financial problems facing the CSLR.

Specifically, the Insurance Council recommends the following reforms to CSLR be considered to address the systemic issues the Scheme faces and ensure its ongoing sustainability:

- The scope of financial losses compensable under the Scheme be reviewed.

  Specifically, compensation under the CSLR should be restricted to cover capital losses. 'But-for' or hypothetical claims that do not involve a capital loss should not be compensable.

  The CSLR should also be reformed to cease compensating each individual trustee in situations where there are multiple trustees managing a single account, leading to 'double dipping' for the same loss. The CSLR should only compensate for one loss once.

  These changes would moderate Scheme costs and ensure the CSLR is truly a scheme of last resort for consumers who have sustained actual capital loss.

- Means testing be introduced to ensure the compensation is directed to those most in need.

  Means testing is applied across many Commonwealth programs to ensure funds and assistance are directed to those most in need and to manage costs and could also be applied to the CSLR.

- The CSLR should not compensate losses arising from investment risk, including losses arising from MIS related advice. The CSLR was not designed to operate as an insurer of investment performance.

- The CSLR exclude compensation for losses arising from failed MIS.

  MIS are high-risk investment products responsible for a disproportionate percentage of claims on the CSLR and a material contributor to the costs blow out undermining its financial sustainability.

  As outlined, the Insurance Council is of the view there is a strong policy case that MIS products be banned for retail investors.

  MIS are high-risk investment products. The CSLR providing compensability for claims relating to MIS arguably legitimises them as a reasonable and appropriate product for retail customers when this is rarely the case. Compensability under the CSLR also arguably increases moral hazard risk that consumers will invest in MIS notwithstanding the high financial risk associated with these investments.

- Consider lowering the compensation cap of the CSLR.

  The cap currently sits at $150K. To ease pressure on the CSLR the maximum amount of compensation available for each claim could be reduced.

Alternatively, different compensation caps could be applied for claims involving different financial products. This approach has been adopted in the in United Kingdom's Financial Services Compensation Scheme.[4]

Current PI insurance requirements – ASIC Regulatory Guide 126

The Consultation paper requests feedback in relation to the current PI insurance requirements for licenses under ASIC Regulatory Guide 126 (RG 126) and ASIC oversight of these requirements (Consultation questions 2 and 3) as well as the appropriateness of the current requirements of RG 126 and how it could be improved (Consultation question 10).

RG 126 requires coverage of between $2 million and $20 million (depending on the revenue of the Australian Financial Service Licensee) and proscribes the scope of cover required.

These requirements were introduced by ASIC in 2008. There has been little change in the required coverage amounts since RG 126 was introduced. Therefore, a review by ASIC of the minimum monetary coverage limits under RG 126 would be worthwhile to ensure these limits are set at an appropriate level, which in turn, would result in there being greater PI insurance coverage available in the event of a consumer claim on a Licensee.

Licensees are each required to undertake their own assessment of the amount of insurance they need to obtain with reference to the assessment process outlined within RG 126. The self-assessment approach used across ASIC's regulatory guides has some merit. However, for the insurance requirements under RG 126 to be effective there needs to be appropriate monitoring and enforcement of these requirements. It is our members' experience that the monitoring and enforcement of Licensee insurance requirements under RG 126 needs to be improved. There may be potential for this to be undertaken cost effectively through the use of emerging technology such as AI applications.

Review of the minimum insurance requirements and better enforcement of them will strengthen the effectiveness of RG 126 in achieving the objective of ensuring Licensees have adequate insurance arrangements for the work they undertake. By extension, this would have a beneficial impact on the CSLR in terms of seeing fewer claims fall on the Scheme.

However, while this may result in some reduction in claims on the Scheme, it is unlikely these changes will have a substantive impact in terms addressing the current financial sustainability issues facing the CSLR due to the sheer volume and quantum of claims entering the Scheme. Only reform to the CSLR and reforms to reduce the incidence of consumer financial losses can fully solve this.

Conclusion

The Insurance Council appreciates the challenges faced in addressing the current financial problems experienced by the CSLR to ensure its ongoing sustainability. As outlined, the only effective way to fully address these problems is through better regulation of Licensees and high-risk financial products like MIS as well as reform to the Scheme itself.

The Insurance Council and our members would welcome the opportunity to further engage with the Treasury on ways to ensure the sustainability of the CSLR and the ongoing protection of consumers.

We would welcome the opportunity to meet with Treasury to discuss our submission and provide more insight on developing a more sustainable framework for the CSLR. In particular, we would like to discuss our suggested regulatory reform options and how they could be best implemented to resolve the current financial sustainability issues of the CSLR.

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[4] 'What we cover' [The Financial Service Compensation Scheme] website.

We trust the information contained in this submission is useful.

In you have any questions in relation to our submission please contact me or Tom Lunn, Director, Insurance Lines at tlunn@insurancecouncil.com.au.

Yours sincerely

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