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Compensation Scheme of Last Resort (CSLR) post-implementation review.

The National Insurance Brokers Association (NIBA) welcomes the opportunity to provide feedback to the Compensation Scheme of Last Resort (CSLR) post-implementation review. As the peak body representing the Australian insurance broking profession, NIBA is committed to ensuring that regulatory frameworks remain proportionate, effective, and aligned with the interests of consumers and businesses.

NIBA has consistently supported robust consumer protections and fair dispute resolution mechanisms while advocating for policy settings that recognise the distinct role of insurance brokers. The CSLR was established to address unpaid determinations where financial service providers fail to meet their compensation obligations, with a focus on areas of demonstrated risk.

About NIBA

NIBA is the peak representative body for the general intermediated insurance industry. NIBA serves as the collective voice of approximately 450 member firms and 15,000 individual brokers. Our membership encompasses a diverse range of entities, including large multinational insurance brokers, Australian broker networks, as well as small and medium-sized businesses located in cities and regional areas around Australia. NIBA advocates for the interests of general insurance brokers and their clients, ensuring that the general industry operates with integrity and professionalism. NIBA's work is guided by our core pillars: community, representation, and professionalism. NIBA's mission is to enhance the professional standing of insurance brokers through robust advocacy, education, and ethical standards. By fostering a collaborative and innovative environment, NIBA aims to elevate the quality of service provided to consumers, strengthening trust and confidence in the insurance broking profession.

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Current Scope of the Scheme

The Supplementary Final Report to the *Review of the financial system external dispute resolution and complaints framework* (The Ramsey Report) recommended a scheme of last resort be introduced in financial services sectors where there is evidence of a “significant problem of compensation not being paid”. Further to this, the Ramsey Report recommended that the scheme be restricted to “failures where a financial adviser has provided personal and/or general advice on relevant financial products”.

‘Relevant financial products’ are defined in Section 910A of the *Corporations Act 2001* as financial products other than basic banking products, general insurance products, or consumer credit insurance. In keeping with this recommendation, general insurance intermediaries are excluded from the scheme.

There is no evidence to suggest that general insurance intermediaries contribute to unpaid determinations in a way that would warrant their inclusion in the scheme. Expanding the CSLR to include insurance intermediaries would impose unnecessary costs on the profession, ultimately increasing expenses for businesses and consumers without delivering meaningful consumer protections. Maintaining the current scope ensures that the CSLR remains focused on areas of demonstrated risk while preserving the accessibility and affordability of professional risk advice.

Exercising the scheme's right to subrogation

When making a claim for compensation under the CSLR, claimants subrogate their rights to recover the amount of the compensation paid to CSLR. This enables the scheme to recover unpaid levies from the financial firm responsible prior to imposing costs on participating financial firms. The CSLR does not currently report on whether or not it has attempted to recover unpaid Australian Financial Complaints Authority (AFCA) determinations and fees from insolvent firms.

Under Australian Financial Services Licensing obligations, all firms are required to hold adequate professional indemnity (PI) insurance (see table 1) that indemnifies the licensee against liability for loss or damage as a result of a breach of Chapter 7 of the Corporations Act by the licensee or its representative- this includes any amount awarded as part of an AFCA determination.

Table 1: ASIC RG 216 Features of adequate professional indemnity insurance cover.

Policy Feature	Minimum Requirement
Policy Limits	\$2 million for any one claim and in the aggregate for AFS licensees with total revenue from financial services provided to retail clients < \$2 million. For AFS licensees with revenue less than \$2 million, minimum cover should approximately equal actual or expected revenue from financial services provided to retail clients (up to a maximum limit of \$20 million).
Scope of Cover	The policy must indemnify the AFS licensee against liability for loss or damage suffered by retail clients because of breaches of Chapter 7 by the licensee or its representative.
Exclusions	The policy must not have the effect of excluding: <ul style="list-style-type: none"> • AFCA awards; • loss caused by the conduct of representatives generally; • fraud and dishonesty; • claims for misrepresentations about services; • claims arising from incidents that have been notified to ASIC; • awards by state boards and specialist tribunals for claims against trustee companies in relation to their role as guardians and administrators of estates
Persons Covered	The policy must cover the acts of the AFS licensee and all of its representatives.
Automatic reinstatements	The policy must include at least one automatic reinstatement or have a limit of at least twice the minimum amount of cover.
Legal costs	Defence costs must be 'in addition' to the minimum limit or the level of cover must be sufficiently increased to take into account these costs.

Despite this requirement, issues with compliance continue to contribute to unpaid determinations. The 2012 St John Review highlighted these issues and recommended improvements to the effectiveness of professional indemnity insurance, including addressing the quantum and coverage of such policies and urging ASIC to take a more proactive role in monitoring compliance.

It is essential for the long-term economic viability of the scheme that the CSLR enforces its right to subrogation. This approach ensures that financial firms are held responsible for any harm they cause, increasing trust in the financial services profession and mitigates the risk of imposing additional costs on compliant firms.

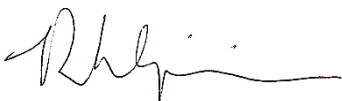
This should be accompanied by greater enforcement of PI insurance obligations by the Australian Securities and Investments Commission (ASIC). NIBA notes that ASIC has existing powers under section 915H of the *Corporations Act* to require a licensee to hold PI insurance for the same length of time as ASIC requires the licensee to maintain AFCA membership after its license is cancelled.

NIBA supports the CSLR's objective of providing compensation to consumers in cases where financial firms fail to meet their obligations. However, it is critical that the scheme remains targeted, proportionate, and focused on areas of demonstrated risk. Imposing additional levies on firms that do not contribute to unpaid determinations would be unjustified and risk undermining the scheme's credibility.

NIBA urges Treasury to ensure that any future adjustments to the CSLR's scope and funding model remain aligned with its original intent: addressing demonstrated risks without imposing unnecessary regulatory and financial burdens. Additionally, enforcing the scheme's subrogation rights and strengthening compliance with PI insurance requirements will improve its long-term viability while minimising undue costs on compliant firms.

NIBA looks forward to engaging further with Treasury on this Review and appreciates the opportunity to contribute to this important discussion.

Yours sincerely,



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