



7 October 2022

Australian Government
Senate Economics Legislation Committee

Submission via web:

https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/FARCSLRBill2022

Inquiry into the Financial Accountability Regime Bill 2022 [Provisions]; Financial Sector Reform Bill 2022 [Provisions]; Financial Services Compensation Scheme of Last Resort Levy Bill 2022 [Provisions] and the Financial Services Compensation Scheme of Last Resort Levy (Collection) Bill 2022 [Provisions]

Brief

AIST supports the principles of accountability, responsibility, and transparency which underpin the proposed Financial Accountability Regime. Improvements can be made to the Regime, including clarifying the definition of a “material contravention” and developing a facility to enable accountable entities to check if potential accountable person candidates have been deregistered.

AIST supports establishing a financial services Compensation Scheme of Last Resort (CSLR) in its current format, being that the levy does not apply to the superannuation sector.

AIST reiterates its views from its earlier submission, dated 7 February 2020¹ in relation the CSLR, that any proposal to extend coverage and funding of the CSLR beyond personal advice is not in line with the approach recommended by the Ramsay Review and endorsed by the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry.

About AIST

Australian Institute of Superannuation Trustees is a national not-for-profit organisation whose membership consists of the trustee directors and staff of industry, corporate and public sector superannuation funds. As the principal advocate and peak representative body for the \$1.7 trillion profit-to-members superannuation sector, AIST plays a key role in policy development and is a leading provider of research. AIST advocates for financial wellbeing in retirement for all Australians regardless of gender, culture, education, or socio-economic background. Through leadership and excellence, AIST supports profit-to-member funds to achieve member-first outcomes and fairness across the retirement system.

Submission

AIST welcomes the opportunity to provide input into the suite of Bills currently before parliament. AIST has also provided feedback directly to Treasury's the exposure draft consultations on Financial Accountability Regime Minister Rules 2022 and Financial Services Compensation Scheme of Last Resort regulations.

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Financial Accountability Regime (FAR)

In prior consultations, AIST had previously sought clarification of some areas of the FAR establishing legislation and while we note that the Bill tabled is not materially different to the version introduced under the former Government, the Explanatory Memorandum has been amended to include more substantive (but limited) detail within certain clauses. The clarification around what constitutes a Significant Related Entity in the superannuation industry, along with the detail of prescribed roles and responsibilities contained in the FAR Rules are valuable updates that address some of our prior feedback.

We note that paragraph 6(2) of the Rules clarifies that the position of member of the Board of directors is prescribed but it is still ambiguous as to whether this extends to shadow or de facto directors, observers and consultants. We presume that active involvement in Board functions is what prescribes accountability under the regime but this would benefit from further clarification.

We reiterate some of our prior comments on the Regime in general for consideration by the Committee:

- the threshold for 'material contravention' be made clear as it is neither defined nor linked to the Corporations Act;
- the interaction with current breach reporting obligations be made clear as there may be multiple different liability provisions for the same behaviour. Funds would benefit from further guidance in what, when and how to report breaches, ensuring that breach reporting for FAR should not duplicate existing breach reporting. There is also potential for overlap or duplication of existing reporting obligations if an 'accountable person' is involved in the investigation and resolution of a material (per FAR) reportable situation (per Corps Act);
- a facility be developed to enable accountable entities to check if potential accountable person candidates have been deregistered; and
- the scope of the secrecy provisions related to the direction powers be reconsidered in light of the APRA Capability Review which recommended that APRA depart from a 'closed door' approach.

Financial Services Compensation Scheme of Last Resort (CSLR)

AIST appreciates that under the CSLR framework, 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.

This framework currently excludes the superannuation sector from this list of sub-sectors subject to the levy. AIST reiterates concerns raised in a previous submission on the CSLR. Although the current exposure draft regulations do not include superannuation in the list of sub-sectors, AIST

is concerned that any extension of an industry funded CSLR to the superannuation sector would be inappropriate.

This is because:

- A compensation scheme for super complaints is not required because the prudential regulation of superannuation funds supports their financial stability and the ability to comply with a determination of a dispute resolution body. By virtue of being subject to the SIS Act and APRA regulation, the risk of fund insolvency, and the inability to comply with a determination is small. The mix of legislation, prudential standards, practice guides, and oversight by APRA have the cumulative effect of ensuring funds' financial stability, which in turn means that funds do not collapse, phoenix, or become unable to comply with a determination requiring the payment of money to a claimant.
- It would be inequitable to require the superannuation industry to fund the CSLR. Profit-to-member funds operate under a business model that returns profit to members only and exist only to benefit members. Consequently, any additional levy to be paid for establishing a CSLR will ultimately be paid by members who will not benefit from such a scheme.
- Part 23 of the Superannuation Industry (Supervision) Act 1993 already effectively operates as a CSLR. Part 23 of the SIS Act allows superannuation funds to receive financial assistance to cover loss due to fraudulent conduct or theft that leads to a difficulty regarding the payment of benefits.²

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AIST understands that a CSLR will ensure that consumers and small businesses receive compensation when a provider has engaged in misconduct and must make restitution. AIST believes that the current list of sub-sectors is appropriate to achieve the outcomes specified by the Royal Commission.

For further information regarding our submission, please contact Kate Brown, Senior Manager, Advocacy & Research via email at [REDACTED] or Sonia Hunyadi, Government Relations and Policy Advisor via email at [REDACTED]

Yours sincerely,

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Eva Scheerlinck

Chief Executive Officer