SUBMISSION TO THE TREASURY OF AUSTRALIA

Consultation Paper: Enhancing member protections in the superannuation system

Submitted by: SOS Save Our Super, Investor Advocacy

On behalf of victims of the First Guardian and Shield Master Fund collapses

Proposal 1: Strengthening governance requirements for Platform Trustees

Q.1: How should a "Platform RSE" and a "Platform Trustee" be defined?

A Platform RSE should be responsible for:

- monitoring unusual inflows,
- monitoring unusual fee deductions,
- generating records of advice.

A Platform Trustee should be the trustee responsible for overseeing products and protecting members through:

- proper due diligence,
- ongoing monitoring,
- enforcing holding limits,
- managing conflicts,
- stepping in early when risks emerge.

Q.2: Is the term pre-mixed trustee-directed product appropriate for capturing the non-platform and non-member directed subcategory of Choice products?

It's important that language around products is simplified and easy for every day Australians to understand, for example:

- Trustee Managed Super Product,
- Standard Diversified Super Product,
- Member Directed Platform Product.

Consumers must understand when they are moving from a trustee managed diversified product into a higher risk member directed environment. That distinction was not properly understood by many investors in Shield and First Guardian.

Requirement to set and enforce holding limits for investment options

Q.3: Would mandatory holding limits be an effective safeguard to promote diversification and reduce overconcentration risk for platform members?

Absolutely yes, holding limits are a must for MISs.
If Diversa had properly enforced the 50% holding limit on First Guardian Master Fund, many consumers would not be facing such devastating losses today. Many investors are now expected to recover less than half of their net investment because holding limits were either not implemented or not enforced.
Members have shared that financial advisers assured that the 100% was simply going to the investing option on the platform and that the money would be dispersed as stated in the SOA.

Q.4: What characteristics of investment options should be considered when setting holding limits?

When setting holding limits, trustees should consider*:*

- what the investment type is, eg MIS,
- the age and track record of the fund,
- liquidity and ability to exit the investment,
- transparency of underlying assets,
- if the RE and Fund Manager are separate entities,
- diversification within the product.

Codified due diligence requirements

Q.5*:* Should codified due diligence obligations be introduced?

Based on consumer feedback from the victims of the collapse of First Guardian and Shield Master Funds, absolutely yes. These two collapses have exposed that broad trustee obligations alone are not enough if there are no clear minimum standards. Many consumers in the collapsed funds have reported that they believed the products available on an APRA regulated super platform had already passed strong independent checks. Clearly the checks that were done were not strong enough, with two out of the four trustees admitting they failed in their due diligence.
There were no clear warnings that FGMF carried a high risk, despite Diversa internally applying holding limits and other platforms rejecting the products all together. There should be universal governance with a universal standard of due diligence.
Most consumers are not sophisticated investors. They trust that superannuation platforms and trustees are acting as gatekeepers to protect their retirement savings, knowing that is their role and purpose. That trust was broken due to inconsistent and inadequate governance standards

Q.6*:* What minimum elements should be specified as part of a codified due diligence obligation?

SOS Save our Super members strongly believe that there should be an independent verification of the underlying investments, liquidity, along with an independent valuation of assets, rather than solely relying on information provided by the REs or the product issuer's research house and auditors. As seen with First Guardian and Shield, this system is not working.
Products must be assessed as suitable for superannuation investors, particularly when retirement savings are involved, as like in FGMF and Shield most consumers were not sophisticated investors.
Trustees and platforms should be required to remove or suspend products quickly where warning signs emerge, like what Equity Trustees did, after seeing a massive inflow of dollars. However they did not alert the consumers of their concern where they could have helped prevent further harm. Members should be notified immediately when risks emerge or internal restrictions such as holding limits are introduced.
Trustees and platforms should be obliged to do quarterly checks on liquidity, onboarding, rapid inflows, redemption delays and valuation changes.

Limiting certain conflicted arrangements and payment*s*

Q.*7:* Are platform-specific restrictions needed to address conflicted payments or benefits that are linked to product listing, preferred placement, continued availability, or member flows?

Yes, as consumers we believe that products on a platform are available because they have been independently vetted in our best interests, not because of commercial or other greed-driven arrangements.

Q.*7.1:* If so, which types of payments or arrangements pose the greatest risk of undermining a Platform Trustee's independence?

The biggest risks are the inflows that keep the products on the platforms: These include:

- volume based incentives,
- revenue sharing arrangements,
- preferred product placement,
- commercial pressures to retain high revenue products despite warnings.

A trustees role is to always ensure members' best interests are protected, above commercial relationships and financial gain.

Q.8*:* How can restrictions be designed to stop harmful incentives without restricting legitimate operational arrangements?

The focus should be on transparency and accountability **(see Annexure 1).** Not every fund or commercial engagement will be harmful, however, trustees, licencees and advisers should never financially benefit from pushing or retaining high risk products.

There should be mandatory disclosures of commercial arrangements with stronger monitoring and obligations for independent due dillegence. Annexure 1 maps this out very clearly.
Retirement savings should not be treated as a sales pipeline, this is someone's hard work that is 'their' pot of gold, their dignity and pride they earned for a healthy, well deserved retirement.

Restricting certain trustee operating models

Q.9: What features of an outsourced model may reduce governance effectiveness?

In outsourced 'trustee for hire' models the responsibilities could become fragmented across platforms, administrators, advisors, investment managers and related service providers. It took many of us investors of First Guardian and Shield to understand all the different entities connected to a 'trustee for hire' who was ultimately responsible. Although they are all members of AFCA, blame was not able to be divided amongst these entities. This model does create more risk to the consumer where nobody takes full ownership to identify and stop consumer harm early. The recent collapses highlight the danger of trustees relying too heavily on information provided by REs and product issuers instead of independent due diligence.
This issue however is not the model itself. We believe the issue is whether the trustee remains 100% accountable, properly resourced and financially capable of protecting its members. There needs to be stronger accountability to all the links in the chain to operate in the best interest of the consumer, have significant PI insurance and share in the responsibility of mismanaged actions that cause consumer harm.

Q.10: What are the characteristics that could be reflected when differentiating between varying trustee business models, to ensure governance obligations are appropriately calibrated to Platform Trustee environments?

We don't feel the model is the issue here. The issue is more the level of control, oversight and the financial capacity of a trustee.
A trustee should:

- independently conduct due diligence (ie. quarterly for new funds),
- engage in ongoing monitoring rather than relying on third party information,
- hold sufficient capital, insurance and financial resources to compensate members in the event of governance failure,
- establish whether they are operating as a passive platform provider or as a fiduciary that acts in the best interest of its members (not just its shareholders).

Although the greatest harm to date for First Guardian and Shield Investors is from the 'trustee for hire' model, it does not mean we don't support this model.

Q.11: What would the impact be of banning the trustee for hire model?

Simply banning a business model does not solve the issues. The issue is consumer protection and avoiding consumer harm. We don't support banning the trustee for hire model, as poor outcomes can and will still continue to occur when the structure of the system is weak, accountability is unclear and trustees fail to protect their members.
Action needs to be taken to define stronger governance standards, codified due diligence obligations, set mandatory holding limits, enforcement of stronger monitoring and an increase in capital requirements.
For a trustee for hire model to operate, it should only be authorised to do so when it can demonstrate:

- financial capacity to compensate members,
- mandatory Insurance coverage,
- capital reserve requirements,
- genuine independent governance, and
- strong active oversight.

The lessons to be learnt from First Guardian and Shield are that governance obligations alone are not enough; financial backing to compensate consumers is critical.
The buck does stop with the trustee, and too many people have been left to suffer due to their inability to compensate losses. We have several members that were relying on their superannuation for cancer treatment, hip operations, the list goes on. Real harm has crippled many Australians.
APRA needs to ensure that a trustee has 'catastrophic loss protection' before taking on large funds, new and existing trustees.

Proposal 2: Increase penalties under the SIS Act

Q.12: Should SIS Act penalties increase to better match comparable penalties in the Corporations Act 2001?

Yes — providing penalties are used to compensate victims.

Q.13: Would higher maximum SIS Act penalties incentivise better Trustee governance?

Yes — providing penalties are used to compensate victims.

Part 2: Superannuation switching

Proposal 3: Introduce a waiting period for inter-fund superannuation switching

Waiting period

Q.14: What length of waiting period would ensure consumers have time to reflect on information before they make a decision?

A short waiting period of around 7 days may assist in reducing impulsive decisions, but longer waiting periods are unlikely to improve consumer protection.

The real issue is not the length of the waiting period or whether consumers need more time. The issue is whether proper due diligence is occurring during that time.

Most consumers are not investment experts. Once they have been convinced to switch, particularly after pressure selling or fear-based marketing, they often spend the waiting period reinforcing why they believe they made the 'right' decision. We have heard many members of SOS Save our Super say "I figured it's Superannuation, what can go wrong?" That mindset will not change for the majority of Australians. This is similar to buying a house. The cooling-off period is not there for the buyer to emotionally rethink the purchase. It exists so proper due diligence can occur, by their solicitor.

The responsibility should not sit entirely with vulnerable consumers. Greater responsibility and accountability should sit with trustees, platforms and administrators to identify and stop inappropriate switching before the transaction is complete.

Q.15: Should members switching superannuation funds be required to reconfirm their choice following a waiting period?

Absolutely, yes, but reconfirmation alone is not enough.

Consumers should be required to reconfirm their decision after the waiting period, however this should occur The receiving platform or trustee must review whether:

- the consumer's risk profile matches the recommended investment,
- the SOA aligns with the member's actual objectives and circumstances,
- the switch results in unusually high concentration risk,
- the consumer understands they may be moving into higher risk or illiquid products, and
- the consumer understands the difference between APRA regulated and non APRA regulated funds.

For higher risk investments, platforms and trustees should also be required to directly contact the consumer before accepting the rollover.

In addition to this, the trustee of the fund the customer is leaving should take on responsibility for contacting the customer and providing general warnings about super switching risks, including:

- whether a lead generator completed their super health check, and how to ensure a legitimate comparison was completed,
- whether the customer has been given sufficient information about investments, risks and fee structures, and
- whether they are making an independent and fully informed decision to switch.

A simple phone call asking clear questions may have prevented significant harm in First Guardian and Shield.

Q.16: Would a waiting period have any negative impacts on consumers?

Yes, it could do. Long waiting periods may create frustration for consumers making legitimate switches, particularly where they are moving for better fees, performance or service.
There is also a risk that the government overestimates the effectiveness of waiting periods as a consumer protection tool.
The First Guardian and Shield collapses were not caused because consumers acted too quickly. They were caused by failures in governance, due diligence, oversight and accountability across trustees, platforms, advisers and lead generation models.
A waiting period without stronger trustee obligations risks becoming a superficial solution that gives consumers a false sense of protection.

One of our members' experiences highlights the limitation of waiting periods. They signed a Statement of Advice in October 2023, but the rollover from their existing superannuation fund was delayed until February 2024. The transaction stalled for four months and could not proceed until a name change discrepancy was resolved. Despite the four month delay, there was no requirement to reassess the advice, no review of changes in the consumer's financial circumstances, and no additional trustee or platform oversight before the rollover ultimately proceeded. The consumer was left surprised that a four-month interruption did not trigger a mandatory review or intervention by any party involved.

This illustrates that a waiting period alone does not protect consumers from harm. In theory, delays may create an opportunity for reconsideration or intervention, but without reassessment and stronger oversight, the consumer would not be aware an opportunity exists. The consumer later reflected that the delay could have been a 'saving grace', yet no safeguard existed to reassess whether the original recommendation remained appropriate months later.

Q.17: How long after the waiting period should a rollover request lapse?

Rollover requests should lapse after 30 days if the consumer has not reconfirmed or the trustee/platform/administrator has not sought reconfirmation from the consumer.
This ensures consumers are making a current and informed decision based on their present circumstances, rather than acting on outdated advice or pressure received months earlier.

Q.18: What challenges may funds face in implementing a waiting period, and how could these challenges be mitigated?

There will be operational and administrative costs involved, however, consumer protection should take priority where retirement savings are at risk.
The biggest challenge will be ensuring the waiting period is meaningful and not simply a delay mechanism.
This could be mitigated by requiring trustees and platforms to actively use the waiting period to conduct additional due diligence. See response in Q15.
Importantly, consumers should also have clear rights to complain to AFCA about the conduct of platforms and administrators, particularly within trustee for hire models where responsibility is often fragmented, yet warrants accountability.

Q.19: Should restrictions apply on communications between a financial adviser and the member after the onset of the waiting period?

Yes, this would prevent any repeated pressure-based contact during the waiting period, particularly where advisers or lead generators attempt to influence, rush or emotionally manipulate consumers into proceeding.
Consumers should be allowed to ask questions and seek clarification, however, the waiting period should not become an opportunity for ongoing sales pressure.
Where high-risk products are involved, communications during the waiting period should also be recorded and auditable.

Q.20: Should consideration be given to a mandatory waiting period applied between the provision of super switching related financial advice and the acceptance of such advice?

Yes, but only if it is combined with stronger trustee and platform obligations. A waiting period alone will not stop another First Guardian or Shield collapse.
The stronger reform requires the receiving trustee, platform and administrators to actively verify that the recommendation is appropriate before accepting the rollover.
Trustees and platforms should not be passive processing centres simply actioning paperwork. They are gatekeepers to Australians' retirement savings and should be required to perform meaningful due diligence before allowing high risk investments onto their platforms.
The focus of reform should shift from placing the burden solely on consumers to placing greater accountability on the entities profiting from these transactions.

Coverage

Q.21: Should a waiting period apply to all switches, or to a prescribed subset?

A waiting period should apply primarily to higher risk switches, particularly where consumers are moving from traditional diversified super products into complex, illiquid or high concentration investments.
Applying lengthy waiting periods to every super switch risks unnecessarily delaying ordinary consumers making legitimate decisions around fees, performance or service.
The stronger focus should be on identifying higher risk transactions and requiring additional due diligence by the receiving platform, trustee and administrators before the rollover is processed.
Where consumers are being switched into products with different risk profiles, that should trigger enhanced protections, direct member contact and greater oversight.

Q.22: How should 'higher-risk product' be defined?

A higher risk product should not simply be defined by market volatility.
It should include products that carry increased risks around liquidity, concentration, transparency, complexity or governance.
Characteristics of higher risk products could include:

- illiquid or difficult to value assets,
- high concentration exposure to a single fund, sector or issuer,
- complex investment structures that ordinary consumers are unlikely to understand (MISs),
- products with limited transparency around underlying investments,
- products experiencing redemption delays or liquidity concerns,
- products with an RE that is new (<5 years),
- rapid abnormal inflows driven by lead generation or aggressive switching activity, and
- products where other major platforms or trustees have declined onboarding due to risk concerns.

Importantly, risk should also be assessed in the context of the individual consumer. A product may be unsuitable simply because it does not align with the member's age, financial literacy, retirement goals or risk tolerance.

Q.23: Are there exemptions which should be considered so as not to unduly restrict member choice?

Yes, consumers should still retain the ability to make legitimate investment choices, particularly where they are moving between standard diversified super products with comparable risk profiles.
Exemptions could be considered for:

- transfers between mainstream APRA regulated diversified funds,
- low risk or trustee-directed diversified investment options,
- employer-related default fund changes,
- pension phase administrative transfers.

Exemptions should not apply where consumers are moving into SMSFs, or higher risk, illiquid or highly concentrated products simply because advice has been provided.

The First Guardian collapse showed that the existence of an SOA alone was not enough protection if trustees and platforms fail to properly assess whether the recommendation is appropriate.

Consumer choice is a must, but retirement savings also require stronger safeguards because most consumers reasonably believe that products available through APRA regulated platforms have already passed robust independent scrutiny.

Warnings / Notifications

Q.24: What content should be included in notifications to consumers?

It is evident from the collapse of First Guardian and Shield Master Funds that warning signs may have helped some of the 11000 affected investors. Not one person has claimed they are a sophisticated investor. Most have never heard of APRA, or understand what APRA protections entail.
It should be acknowledged that these types of disclosures are typically weak consumer protections and can easily be defeated by messages from financial advisers who build trust with their clients. Treasury should consumer test any proposed notifications under real world conditions (e.g. with a trusted adviser telling the client to disregard the notifications). Treasury should ensure any proposed messages are in plain English and clearly explain when they are moving into higher risk investments. This should be no different to health warnings on cigarette packets. If a product carries heightened risks of illiquidity, concentration, loss of capital or restricted access to funds, consumers should be clearly warned before investing.
Notifications should include clear statements such as:

- this product carries a higher risk of financial harm,
- you may lose a significant portion or all of your investment,
- your funds may become illiquid or frozen,
- this product is not comparable to a standard diversified super fund,
- high concentration investments increase the risk of catastrophic losses,
- APRA regulation does not guarantee your money is protected from investment failure.

Warnings should be short, prominent and impossible to miss, not hidden deep inside lengthy disclosure documents that ordinary consumers do not understand.

Q.24.1: Switching to a platform RSE?

A fact sheet clearly explaining the difference between a fund and a platform, and the risks that exist on platforms.

Q.24.2: Switching to an SMSF?

A fact sheet clearly explaining what an SMSF is, the benefits vs risks, and that APRA protections do not apply.

Q.25: Are regulators or member's current funds more appropriate to provide these warnings?

Both the current fund and incoming fund should provide these warnings to the consumer.

Implementation

Q.26: Would implementation of this proposal result in significant compliance costs for trustees?

There would be additional costs, but not significant. A quick phone call from the customer service team to go through an approved check list, or printing/posting or emailing information, are not time intensive tasks that would lead to significant costs for the trustees.
Not implementing these types of risk management processes has the potential to lead to significant costs when collapses occur; we are sure the likes of Macquarie and Netwealth might have additional comments to add here on this very topic.

Visibility of fund flows

Q.27: In addition to a waiting period to slow down the super switching process, increased regulator visibility of switching could also work to ensure members are better protected from potential harm. Would there be benefit from requiring receiving funds to collect and provide information on flows into higher-risk products?

Yes. This process alone would have flagged unusual activity earlier and stopped much of the mass harm that occurred.

International experience

Q.28: What are the potential benefits and harms of imposing conditions on the types of asset classes that schemes may invest in when offered to retail clients? How might the market impacts of such a restriction in an Australian context differ to the experience of alternative jurisdictions?

There are many benefits of placing conditions on high-risk asset classes that are offered to retail customers. Ordinary Australians do not have the capability to assess complex MIS products. Restrictions are essential to stop retail investors being over exposed as we have seen with First Guardian and Shield Master Funds.
Considering the Australian super system is compulsory, stronger protection is justified.
This paper notes the UK and US place tighter limits around retail access to illiquid, unregulated and concentrated assets.Treasury needs to learn from that, especially after these recent collapses.

Q.29: Should certain schemes remain accessible to retail investors without restriction, while others require additional conditions or oversight?

First Guardian showed us how dangerous it is when a product is described as diversified, but in reality, had serious liquidity and transparency issues with lock-in periods, overexposure to property development and mortgage lending with a limited track record.
If schemes are to remain available to retail investors, there needs to be stricter oversight of those schemes.
If any scheme has products that include the following, they should not be available to retail consumers:

- illiquid assets,
- unlisted assets,
- private credit,
- property development exposure,
- complex underlying funds,
- high concentration risk,
- redemption delays,
- rapid inflow from advisors or lead generators.

All available efforts should be made to protect Australians' retirement funds.

Q.30: What transition issues would MISs face if retail access to certain asset classes were restricted under an amended MIS framework, such as under the UK's frameworks?

A sensible transition period will be required if MIS asset classes are restricted (3-6 months). The MIS will need time to restructure their portfolios, improve disclosures and increase liquidity risks, reduce concentration and move investors into more suitable products.
For products exhibiting red flags, trustees and platforms should be required to act quickly by freezing further inflows, enforcing immediate holding limits and warning members.
There is evidence Diversa requested Venture Egg to sell down two members who had a 93%+ exposure to First Guardian. This was not extended to other members nor were members advised of the red flags that both licencees, trustees and platforms had the privilege to see. First Guardian investors were left in the dark on holding limits, risk profile and concerns of liquidity.
Any transition must put consumers first, not protect the business model of risky schemes, or turn a blind eye to questionable schemes.

Proposal 4: Limit fee deductions for switching-related financial advice

It is clear from the high risk switching activity involved in Shield and First Guardian that advice fees were a driving factor behind many of the switches. There are a distinct lack of controls in place across trustees to monitor and prevent fee driven advice. While we won't comment on the specifics of the proposals, we do see the need for greater protections from gatekeepers, like trustees, to protect their members from excessive advice charging.

Proposal 5: Requiring Platform Trustees to compensate members for eligible losses

Funding of member compensation

Q.38: Do you consider existing pathways for members to seek redress for financial losses are overly complex and not fit for purpose?

Without a doubt, our members have found the existing pathway through AFCA overwhelming and confusing, particularly with knowing who to complain against, and how to structure the complaint. Many members had their complaints rejected by AFCA simply because they complained directly against First Guardian and Shield. Some have given up and not submitted another complaint against a licensee or trustee due to the distress of being rejected.

The vast majority of victims are yet to submit a complaint to AFCA. We strongly believe greater automation needs to be implemented. It should not be up to victims to navigate an overly complex process that is currently not fit for purpose. The system needs to find the victims, not the other way around, and automate compensation processes as much as possible. SOS Save Our Super has strongly advocated for Pay Now Recover Later for these very reasons. When people do the right thing, switching super under the financial framework that is in place to protect them, the system should not fail them. The government should have a moral compass to step up for those severely harmed, no different to floods or bush fires.

Q.39: Should the requirement to compensate members from trustee capital be pre or post funded?

This should be pre-funded. Consumers should not be left waiting for years to be compensated whilst issues are argued out in the courts. Liquidation can take years and the process is complex and stressful for those affected. Trustees are entrusted with overseeing billions of dollars in retirement savings, they should have insurances and capital reserves in place for catastrophic disasters.

Q.40: If a pre-funded requirement were adopted, should it be principles-based (adequate capital to fund compensation) or prescriptive (a minimum amount, for example linked to funds under management or another exposure measure)?

There should be a set minimum capital based on the size of the fund, insurance, and/or compensation reserve which is linked to the funds under management. APRA should be allowed to increase requirements for higher risk products.

Eligible loss

Q.41: What criteria and evidentiary threshold should apply to determine that a loss is attributable to external fraud or theft and therefore an "eligible loss"?

Any evidence of mismanagement, misappropriation of funds, or misconduct, should be included. When Australians' super has been spent on personal luxury cars, personal luxury properties, luxury handbags for mistresses, and moved offshore, and an eligible loss is yet to be determined, it is clear the system is broken and the threshold is too high.

Consumers should not have to wait for civil or criminal proceedings before support of compensation begins.

Activation

Q.42: Which independent body would you consider to be most appropriate for determining that an eligible loss event has occurred?

ASIC, in collaboration with liquidators, and in consultation with APRA.

The current system of years-long court battles is inappropriate as it creates an unreasonable delay in compensating victims.

Where there is evidence of 'misconduct on an industrial scale' that has caused catastrophic consumer harm there should be powers that can be invoked to compensate consumers.

Q.43: How should this new mechanism work alongside existing compensation pathways such as trustee remediation, ORFR, AFCA/CSLR and Part 23 assistance?

Where there is sufficient evidence of large scale consumer harm, there should be power to trigger interim compensation. ASIC, working alongside the liquidators, and APRA where required.
In the case of First Guardian and Shield MasterFunds, the then Chair Joe Longo and the then Deputy Chair both referred to the collapse as 'Industrial Scale Misconduct' working alongside the liquidators and APRA, this should create a clear pathway to compensate victims first. With recovery actions between parties coming later. Pay Now Recover Later should be the guiding principle.

Determining compensation

Q.44: How should compensation be determined?

If responsibilities are clarified, determining a party or parties responsible for compensating victims should be an easier process that avoids the finger pointing we have seen in the First Guardian and Shield collapses. Victims should be entitled to compensation equal to the financial position they would be in if not for the eligible loss event.
Consumers should not receive different outcomes just because they were with different trustees, where one decides to compensate and the other takes the path of litigation.

Interaction with existing redress mechanisms

Q.45: What changes should be made to existing redress mechanisms if this proposal is implemented?

The whole system needs to become faster, simpler and less complex for everyday Australians. It needs to be more consumer focused, with greater assistance services. In the case of the First Guardian and Shield collapses, victims have had to rely heavily on the support of other victims to understand the process and lodge a complaint.
AFCA should be streamlined and more automated where large scale collapses occur.
All platforms, administrators, licensees, super trustees and trustee for hire models that clearly fall under AFCA's jurisdiction should be subject to claims, complaints should be able to be joined together, and AFCA should have the power to proportion blame under the guidance of ASIC.

https://www.professionalplanner.com.au/2025/12/the-super-system-failed-12000-australians-and-its-time-we-faced-the-truth/
See **Annexure 2** - Submission to Treasury December 1st 2025.

Alternative compensation proposals

Q.46: Would providing ASIC with a power to direct trustees to commence remediation processes provide an effective avenue to redress to members?

Yes. The current process where ASIC sue trustees to seek compensation for investors is ineffective, time consuming and expensive. ASIC should have powers to direct trustees outside of the court system, should they have sufficient evidence to do so.

CLOSING

SOS Save Our Super welcomes the opportunity to contribute to this consultation on behalf of thousands of ordinary Australians impacted by the collapses of First Guardian and Shield Master Funds.

What these collapses exposed was not simply investment failure. They exposed a system that was too complex, too fragmented and too difficult for ordinary consumers to navigate once harm occurred.

Many victims are suffering significant emotional distress, anxiety, depression and ongoing mental health impacts. We have members delaying cancer treatment, unable to retire, returning to work in their late 60s and 70s, struggling with relationship breakdowns and living under immense financial pressure after losing the retirement savings they trusted the system to protect.

The strongest lesson from this collapse is that prevention, accountability and fast compensation matter. Consumers should not spend years trapped between trustees, platforms, liquidators, AFCA, CSLR and court proceedings while entities argue over responsibility.

The difference between members who were compensated quickly by trustees, compared to those still caught in litigation years later, has been devastating to witness. It has created two very different classes of victims from the same misconduct.

SOS Save Our Super strongly believes the future framework must prioritise:

- stronger trustee accountability,
- mandatory due diligence and holding limits,
- greater transparency and consumer warnings,
- capital, insurance and catastrophic loss protections for trustees,
- simpler and more automated compensation pathways,
- stronger oversight of switching and high risk products, and
- Pay Now, Recover Later, as the guiding principle for catastrophic consumer harm events

Australians are compelled to place their retirement savings into the superannuation system. In return, they deserve a framework that genuinely protects them when systemic failures occur.

The superannuation system should never leave financially harmed victims carrying the emotional, financial and health burden of failures they did not create.

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Contributions made by: Natalia Russ & Danielle Adams
Case Studies Contributions made by: Members of the SOS Save Our Super Facebook Page

Annexure 1

FinReg Transparency Portal V2

Suggestion to provide ASIC – AFCA – APRA – CSLR – FAA better transparency on adherence to regulatory requirements

SOS SAVE OUR SUPER | POLICY PROPOSAL

Prepared By: Melinda Kee

FinReg Transparency Portal

A Centralised Government Compliance & Visibility Platform for Australia's Financial Services Ecosystem

ASIC | **APRA** | **AFCA** | **CSLR** | **FAAA**

Regulatory Access Partners

THE PROBLEM

Why a centralised portal is urgently needed

PI Insurance - No Central Visibility

There is no mechanism for ASIC, APRA, AFCA, or CSLR to verify in real time that licensees, trustees, auditors, and fund managers hold current PI insurance. Lapses go undetected until claims are made.

Double Compensation Risk

Without cross-referencing between CSLR payouts, PI insurance claims, and class action settlements, consumers may be compensated multiple times while others receive nothing.

PDS Currency Not Enforced

Fund managers are not required to maintain a live, auditable repository of current Product Disclosure Statements accessible to regulators and compliance bodies simultaneously.

Class Actions Operate in Isolation

Legal firms pursuing class actions have no mandated channel to cross-check CSLR and insurance payouts, creating opacity that undermines fair and efficient consumer redress.

The FinReg Transparency Portal closes all of these gaps in a single, mandated, penalty-backed platform.

PORTAL ARCHITECTURE

Two access tiers — Regulatory Oversight | Industry Compliance

REGULATORY ACCESS (Read + Alert)

ASIC
Full system oversight

APRA
Trustee compliance

AFCA
Dispute resolution

CSLR
Compensation visibility

FAAA
Advisor compliance

FinReg Transparency Portal

Legal Firms must Register Class actions Against a Financial Firm to allow full transparency to work with the CSLR to ensure no double compensations

INDUSTRY LOGIN (Upload + Report)

Trustees
PI, DDO, fund onboarding

Licensees
PI, claims, payments

Auditors
PI insurance currency

Research Houses
PI + methodology docs

Fund Managers
Current PDS uploads

Legal Firms - class action register (mandatory login)

MODULE 1 — PI INSURANCE COMPLIANCE

Mandatory upload & real-time visibility for all relevant entities

WHO MUST UPLOAD

- **Licensees**
- **Trustees**
- **Auditors**
- **Research Houses**
- **Fund Managers**

REQUIREMENTS

Annual upload

PI certificate renewed each policy year - expiry date auto-tracked

Claims notification

Proof of notification to insurer uploaded within 14 days of any claim

Proof of payment

Evidence of premium payment uploaded - supports CSLR transparency

Real-time regulator access

ASIC, APRA, AFCA, CSLR & FAAA view all PI records instantly

Automated expiry alerts

System alerts entity 90, 60, 30 days before expiry - ASIC notified on lapse

PENALTY: Civil penalty applies for each day PI insurance is not current and visible on the portal. ASIC empowered to issue immediate stop-order.

MODULE 2 — FUND MANAGER PDS REPOSITORY

Live, auditable Product Disclosure Statement currency - visible to all regulators

What Must Be Uploaded

- Current PDS for every product offered
- Supplementary PDS (SPDS) where applicable
- Target Market Determination (TMD)
- Date of each document version
- Previous versions retained for audit trail

Who Can Access

- ASIC — compliance and stop orders
- APRA/FAAA — Trustee & adviser suitability review
- AFCA — dispute context
- CSLR — product context for claims
- Treasury — policy and systemic review
- Licensees — due diligence on products
  Trustees — fund selection oversight

Obligations & Consequences

- PDS must be updated within 5 business days of any material change
- Penalty per day for outdated PDS remaining visible as current
- ASIC notified automatically on missed update deadlines
- Product cannot be promoted until PDS is confirmed current on portal
- Auditor attestation required annually

PENALTY: Distributing a product without a current PDS on the portal constitutes a breach. Civil penalty applies per product per day.

MODULE 3 — TRUSTEE & LICENSEE DUE DILIGENCE

Mandatory proof of due diligence when onboarding any new superannuation fund

1

Fund Onboarding Trigger

When a Trustee or Licensee proposes to onboard a new superannuation fund, a mandatory due diligence filing is triggered in the portal.

2

DD Checklist Completion

The entity must complete a structured portal checklist covering: fund mandate, fee structure, investment strategy, risk profile, member suitability, and PDS currency.

3

Supporting Documents Upload

Upload of current PDS, TMD, fund constitution, auditor sign-off, and any research house assessment. All docs timestamped and version-controlled.

4

Regulator Notification

ASIC, APRA and FAAA receive automated notification of each new fund onboarding. Flag raised if PDS is not current on portal at time of onboarding.

5

Ongoing Maintenance

Trustee / Licensee must update the portal within 10 business days of any material change to fund structure, fees, or risk profile. Failure triggers penalty.

6

Annual Attestation

Annual statutory declaration required confirming due diligence is current. Auditor co-signature required. Regulator access to all records.

PENALTY: Onboarding a superannuation fund without a completed portal due diligence filing is a strict liability offence.

MODULE 4 — CSLR COMPENSATION TRANSPARENCY

Eliminating double compensation — full cross-register visibility

HOW IT WORKS: Every CSLR payment, PI insurance payout, AFCA determination, and class action settlement is recorded on the portal. Legal firms must apply for a login and cross-check the register before filing. CSLR can see all streams in one view. No consumer can be compensated twice.

MANDATORY: Legal firms pursuing class actions must register on the portal and cross-check the CSLR register before proceeding. Penalty for failure to register.

MODULE 5 — CLASS ACTIONS & LEGAL FIRM REGISTER

Mandatory registration, cross-checking, and transparency obligations for pursuing legal firms

REGISTRATION PROCESS

1 **Apply for portal login**
Legal firm must apply through ASIC-administered portal. Application includes firm details, matter description, and named affected consumers.

2 **Cross-check CSLR register**
On login, firm is provided with a list of all consumers who have received CSLR payments relevant to their matter.

3 **Cross-check PI & AFCA records**
Firm must certify it has reviewed all insurance payouts and AFCA determinations before filing any claim.

4 **File compensation exclusions**
Any consumer already compensated must be excluded from the class or the settlement must account for prior payments. (excluding partial compensation)

5 **Post-settlement reporting**
Settlement outcomes are uploaded to the portal within 30 days. CSLR and insurers receive automatic notification.

WHAT THE PORTAL PROVIDES TO LEGAL FIRMS

CSLR Payout Register
Full list of consumers who have received CSLR compensation, by matter type and date

PI Insurance Payments
Aggregated view of insurer payouts by licensee/trustee — consumer-level where court-ordered

AFCA Determinations
All relevant AFCA outcomes by product and entity (resulting in upcoming payments)

Class Action Register
All registered class actions — avoid duplication of claims across competing law firms

Penalty for non-compliance
Failure to register before filing constitutes contempt of the regulatory process. Civil penalty applies.

No class action may proceed against a relevant financial services entity without a verified portal login. This is a precondition, not a recommendation.

PENALTIES & ENFORCEMENT FRAMEWORK

Non-compliance is not an option - penalties are civil, criminal, and licence-based

Licensees

- PI insurance not current on portal
- Failure to upload claims notification within 14 days
- Onboarding super fund without DD filing

Penalty: Civil penalty per day of non-compliance + licence suspension on 3rd breach

Trustees

- PI insurance lapsed / not uploaded
- Failure to complete annual DD attestation
- Material fund change not notified within 10 days

Penalty: Civil penalty + ASIC investigation trigger. Director personal liability where data retention failures occur.

Auditors

- PI insurance not maintained on portal
- Annual attestation not completed

Penalty: Registration cancellation. ASIC referral for professional conduct review.

Fund Managers

- PDS not current on portal
- New PDS not uploaded within 5 business days of change

Penalty: Product cannot be distributed. Civil penalty per product per day. ASIC stop-order power.

Research Houses

- PI insurance not maintained on portal
- Methodology documentation not current

Penalty: Assessments not recognised for compliance purposes. Civil penalty applies.

Legal Firms

- Class action filed without portal registration
- Failure to cross-check CSLR register before filing

Penalty: Civil penalty. Court may set aside proceedings. ASIC referral to Law Society.

EXTENDED PORTAL USES — FUTURE MODULES

The portal is a platform — not just a document repository. Additional modules can be activated by regulation.

Real-Time Breach Alerting

Regulators receive automated alerts when any entity's documentation lapses, a penalty threshold is breached, or unusual activity is detected.

Systemic Risk Dashboard

Treasury and ASIC access an aggregate risk dashboard showing PI insurance coverage rates, lapse clusters, and claims concentration by fund type.

Trustee & Adviser Compliance History

APRA/FAAA can view the full compliance history of any Trustee & AFS licensee, including PI currency, claims history, and DD filing record, when assessing fitness.

Individual Adviser Register

Extension of the portal to capture individual adviser compliance records, including PI claims made against them personally, accessible to licensees onboarding advisers.

Multi-Fund Consolidated View

Trustees managing multiple funds can view all PI, PDS, and DD records across their entire portfolio in a single dashboard. ASIC can compare across trustee groups.

Consumer Self-Check

A limited public-facing view allowing consumers to verify whether the entity they were advised by held current PI insurance and a valid AFS licence at the relevant date.

Inter-Regulator Data Sharing

Structured data-sharing protocols between ASIC, APRA, AFCA, CSLR, and FAAA, removing the need for manual information requests and reducing regulatory duplication.

Automated Penalty Initiation

Where non-compliance persists beyond a defined threshold, the portal automatically initiates the penalty process and generates an ASIC referral, reducing enforcement lag.

The portal is built to scale - each module activated by regulation, without requiring new platform infrastructure.

The FinReg Transparency Portal: A Single Source of Truth.

As an investor of FGMF and dealing with trying to be the bridge between government agencies and the victims, I have been perplexed by the lack of transparency in an industry where transparency is critical. I have had conversations with ASIC/AFCA/FAAA & the CSLR in relation to InterPrac and their PI insurance. Not one agency had transparency which showed no enforceable accountability was in place.

PI Insurance

All relevant entities maintain visible, current PI insurance - penalties for lapses

CSLR Transparency

All compensation streams cross-referenced - double payment structurally prevented

PDS Currency

Fund Managers maintain live PDS records - no distribution without portal confirmation

Class Action Register

Legal firms mandated to register and cross-check before filing - no exceptions

Due Diligence

Trustees & Licensees complete mandatory DD filings for every super fund onboarding

Regulator Access

ASIC, APRA, FAAA, AFCA, CSLR & Treasury have real-time, simultaneous visibility of all records

Annexure 2

Submission to Treasury.

December 1st, 2025

BRIEFING PAPER

Strengthening AFCA's Capacity to Resolve First Guardian & Shield Complaints

Prepared for: The Hon. Dr Daniel Mulino MP, Assistant Treasurer, Pat Conaghan MP
CC: Ted O'Brien MP
Prepared by: Melinda Kee
Date: December 1st, 2025

Purpose of this Briefing

This briefing outlines structural and operational barriers preventing the Australian Financial Complaints Authority (AFCA) from efficiently resolving complaints arising from the First Guardian and Shield collapses. These issues have already been raised directly with AFCA's Head of Legal and Government Relations Team; however, it is evident that several issues require urgent government intervention.

Background

Approximately 12,000 Australians have been impacted by the collapse of the First Guardian and Shield Master Fund structures. Many have lost their entire retirement savings. The AFCA complaints process is now the primary path to redress for thousands of Australians, yet AFCA is working within legislative, operational, and resource constraints that are significantly slowing the progress of cases.

AFCA representatives acknowledged in my meeting that they are dealing with unprecedented volume, unprecedented complexity, and an operating framework not designed for mass-harm events of this scale.

Many barriers AFCA faces cannot be solved internally; they require direction, resourcing, or regulatory reform from the government.

Key Issues Identified

The following issues emerged directly from the AFCA meeting and reflect real barriers preventing timely outcomes for victims.

Issue 1: Poor Access to Documents from Liquidators and Insolvent Firms

AFCA is unable to obtain many SOAs, client files, and supporting documents because:

- Liquidators lack funding to retrieve files.
- They refuse to perform additional searches without payment.
- Some client files appear incomplete or inaccessible.

This is significantly delaying assessments, especially for older or vulnerable complainants.

Government Action Required

- Fund or mandate document retrieval by liquidators for AFCA matters.
- Introduce penalties for non-cooperation or obstruction.
- Require liquidators to supply client files within defined timeframes.

Issue 2: AFCA Legislation Prevents "Batch" or Streamlined Determinations, and AFCA's jurisdiction does not allow complaints against super trustees.

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12,000 AUSTRALIANS, FIGHTING FOR JUSTICE

Despite thousands of complaints sharing identical or near-identical fact patterns, AFCA Act requires:

- Case-by-case assessment,
- Individual jurisdiction checks,
- Individual determinations.

This causes staggering delays and prevents mass, efficient resolution. It is disgraceful to the mass of individuals to endure these delays.

Government Action Required

- Amend AFCA legislation to allow streamlined, bulk, or representative determinations in mass-harm events.
- Provide a legislative model similar to remediation frameworks used by major banks.
- Create a new "Systemic Collapse Response Framework" empowering AFCA to accelerate outcomes.
- Seek legislative approval to allow complaints against trustees relating to due diligence failures.

Issue 3: AFCA Under-Resourced for a Collapse of This Scale

Even though only a fraction of affected victims have lodged a complaint to AFCA to date AFCA confirmed:

- They have needed to build new teams rapidly.
- Staff are working weekends to push through "lead decisions."
- Case managers are limited relative to the thousands of cases lodged.
- Communication departments are also overwhelmed.

Government Action Required

- Approve surge funding for AFCA dedicated to large-scale collapse events.
- Support a temporary task force focused solely on First Guardian/Shield.
- Provide short-term staffing injections for assessment, documentation, and communications.

Issue 4: InterPrac's Jurisdictional Challenges Are Stalling the Entire Pipeline

AFCA advised:

- InterPrac (a solvent advice licensee) is actively challenging AFCA's jurisdiction.
- These challenges are delaying the first "lead determinations" for all InterPrac cases.
- Delays in these lead matters stall the entire downstream case pipeline.

Government Action Required

- Reform the Corporations Act/AFCA Rules to require stronger cooperation from licensees.
- Introduce penalties for tactical delays or refusal to cooperate with AFCA processes.
- Provide AFCA with a mechanism to escalate systemic non-cooperation directly to ASIC for enforcement action.

Issue 5: Lack of Clarity on AFCA's Power to Compensate in Full When Investments Are in Liquidation

AFCA confirmed there is no clear, consistent framework for how compensation should operate when an investment is already in liquidation. Historically, AFCA has required an advice firm or licensee to take over the units of the failed investment, effectively removing the investor from the collapse and compensating them in full. This approach has allowed consumers to be restored to their position before the failure, irrespective of what ultimately happened in the liquidated fund.

However:

- Under the current CSLR legislative structure, there is no equivalent mechanism.
- CSLR is restricted to a $150,000 cap and does not have the ability to require a firm to take over units or provide full compensation.
- This creates a two-tiered compensation model, where consumers whose determinations fall under CSLR receive significantly less than consumers whose determinations were against solvent firms.

This inconsistency undermines fairness and creates confusion among complainants, advisers, and AFCA itself.

Government Action Required

- Provide statutory clarity on AFCA's authority to order full "unit takeover" compensation even when an underlying investment is in liquidation.
- Amend CSLR legislation to allow:
    - Equivalent compensation frameworks,
    - A pathway for full compensation where AFCA rules in the consumer's favour,
    - Fairness between complainants whose licensees are solvent versus insolvent.
- Create a harmonised compensation model ensuring that liquidation status does not determine whether a victim receives full redress.

Issue 6: Lack of a Formal Protocol for MP / Ministerial Communications to AFCA

AFCA confirmed:

- Only written MP enquiries are flagged in their internal system.
- Verbal contacts, even from Ministers, may not be recorded.
- This creates inconsistency and the risk of perceived or real inequity.

Government Action Required

- Create a formal, mandated protocol for how AFCA must process, record, and respond to all parliamentary enquiries.
- Ensure transparency and prevent accidental prioritisation based on informally relayed communications.

Issue 7: Confusing Multi-Entity Complaint Requirements for Ordinary Consumers

AFCA's framework requires separate complaints against:

- Financial advisers,
- Trustees,
- Platforms,
- MIS operators.

This is overwhelming for retirees, non-English speakers, the unwell, and vulnerable victims.

Government Action Required

- Create a **"single-point-of-lodgement"** model for mass failures.
- Introduce a coordinated AFCA/ASIC/Trustee triage system for large-scale collapses.
- Provide government-funded support services for complainants who cannot navigate the process alone.

Issue 8: Insufficient Communication Resources within AFCA

AFCA agreed that:

- Communication with victims has not been adequate.
- Many complainants receive no updates for months.
- AFCA has insufficient staff dedicated to proactive communication.
- Complainants are not advised of their place in the que, causing complaints to continue, uncertainty and undue anxiety.

Government Action Required

- Provide AFCA with funding for a dedicated communications and well-being support unit for this collapse.
- Require periodic public updates (monthly or quarterly) for impacted consumers.
- Introduce a transparent queue-position system (e.g., "you are complaint 354 in the queue") so complainants can track their place in line and reduce anxiety caused by uncertainty, particularly when AFCA cannot meet its advertised timelines

Issue 9: No Formal Hardship Prioritisation System

AFCA can prioritise hardship cases (e.g., elderly or seriously unwell), but:

- There is no formal hardship framework.
- Complainants must self-advocate without guidance.
- Many vulnerable individuals are slipping through the cracks.

Government Action Required

- Introduce an AFCA-hardship guideline specific to mass collapse events.
- Mandate transparent prioritisation for vulnerable cohorts.
- Provide additional government-funded hardship case management capability.
- Hardship cases related to Shield/First Guardian are yet to be processed.

Issue 10: CSLR Timing Rules Remain Unclear

AFCA could not confirm:

- Whether CSLR payments require liquidation to be complete.
- Whether lost earnings can be considered.
- How timelines will operate.

Government Action Required

- Provide clarity in CSLR legislation regarding:
    - When CSLR must pay,
    - Whether CSLR can pay before liquidation,
    - Whether lost earnings are included or excluded.
    - CSLR to take ownership of the First Guardian /Shield Units to allow early payout.

Recommendations for Ministerial Consideration

1. Establish a First Guardian/Shield Recovery Taskforce across AFCA–ASIC–Treasury.
2. Provide additional emergency funding to AFCA for:
    - Case managers
    - Communication staff
    - Document processing
3. Introduce legislation enabling batch/streamlined determinations in mass-harm events.
4. Mandate liquidator cooperation and fund retrieval of client files.
5. Strengthen licensee obligations to cooperate with AFCA investigations.
6. Create a single-entry complaints pathway for large-scale collapses.
7. Develop a formal hardship-prioritisation framework.
8. Provide statutory clarity around CSLR timelines and advance-payment authority, and introduce a transparent queue-position system (e.g., "you are complaint 354 in the queue") to reduce uncertainty where AFCA cannot meet advertised timelines
9. Implement a uniform protocol for documenting MP/Ministerial enquiries.
10. Clarify AFCA's authority to compensate in full when investments are in liquidation and align CSLR rules so equivalent compensation is possible.

These are all government systemic issues, not AFCA failures.

To deliver faster and fairer outcomes for 12,000 affected Australians, government support and reform are essential.

I welcome the opportunity to discuss these points in further detail or contribute victim perspectives to any working group or reform process.

Melinda Kee

First Guardian Master Fund Investor
SOS Save Our Super