DIGITAL ECONOMY COUNCIL OF AUSTRALIA

Supplementary Submission

Compensation Scheme of Last Resort: 2026–27 special levy and the application of the waterfall framework

The Treasury | CSLR@treasury.gov.au | 8 October 2026

Introduction

The Digital Economy Council of Australia (DECA) welcomes the opportunity to provide supplementary feedback on Treasury's targeted consultation on the application of the waterfall framework to the Compensation Scheme of Last Resort (CSLR) 2026–27 special levy.

DECA represents businesses across Australia's digital economy, including digital asset exchanges, custodians, financial technology providers and payments businesses. A significant number of our members are, or are becoming, licensed issuers of over-the-counter (OTC) derivatives and therefore fall within the subsector most affected by the proposed allocation.

We recognise the importance of the CSLR in ensuring consumers can access compensation where eligible determinations remain unpaid, and we support a scheme that maintains confidence in Australia's financial services sector. Our concern is the proportionality of the proposed allocation for smaller licensed businesses, particularly digital asset businesses operating within, or transitioning into, the new regulatory framework.

1. Disproportionate impact on licensed OTC derivative issuers

Under the proposed third tier of the waterfall framework, approximately $11.38 million is allocated to the retail OTC derivatives issuer subsector. Based on the 76 entities identified in ASIC's July 2026 industry funding material,[1] this suggests an average allocation approaching $150,000 per entity. This is an indicative calculation rather than a confirmed liability. The actual impact will depend on the legislative methodology, entity classification and the final levy determination.

By contrast, we understand the special levy proposed for several other subsectors may amount to only a few thousand dollars per entity. For smaller businesses with limited revenue and capital, an additional levy of the scale indicated for OTC derivative issuers would be a material financial burden. We are concerned that the methodology does not adequately distinguish between businesses of very different size, financial capacity and exposure to the risks underlying CSLR claims.

2. Cumulative regulatory costs

The proposed levy must be considered alongside the substantial regulatory change digital asset businesses are already managing, including new licensing obligations, custody and financial resource requirements, AML/CTF reforms and ASIC industry funding levies.

Members have advised that annual ASIC industry funding costs for OTC derivative issuers have risen from around $20,000 to more than $65,000 in recent years. Members are also concerned that, given the size of the CSLR's outstanding claims, special levies may recur and increase in future years. Taken together, these costs fall hardest on smaller operators that have invested heavily in obtaining a licence and lack the economies of scale of larger institutions.

[1] ASIC, Cost Recovery Implementation Statement: ASIC industry funding model (July 2026).

The cumulative effect risks creating barriers to market entry, discouraging investment in licensing and compliance, and placing smaller regulated businesses at a competitive disadvantage to unlicensed or offshore providers. At a time when Australia is establishing a clear framework for digital assets, regulatory costs need to remain proportionate and commercially sustainable.

3. Alignment between levy contributions and underlying risk

We understand the waterfall framework is intended to allocate special levy costs by reference to the relationship between subsectors and the losses giving rise to compensation claims. However, the losses driving the 2026–27 special levy arise largely from the Shield and First Guardian failures, which have no connection to digital asset businesses.

We encourage Treasury to provide greater transparency on the rationale for allocating significant costs to subsectors with limited connection to the underlying misconduct. In particular, the use of ASIC regulatory effort as an allocation measure should be tested to confirm it reflects industry risk, business activity and financial capacity. Regulatory supervision costs are not a direct measure of a subsector's contribution to consumer compensation losses, and this distinction matters most where smaller licensed businesses are asked to fund historical failures that occurred elsewhere in the financial system.

4. Recommendations

DECA respectfully recommends that Treasury:

1. Undertake a targeted assessment of the proposed allocation to identify disproportionate impacts on smaller businesses and subsectors, including OTC derivative issuers engaged in digital assets.
2. Publish modelling detailed enough for affected businesses to understand the methodology, the assumptions underpinning the allocation and their likely individual liability.
3. Assess the special levy alongside existing ASIC industry funding levies and other regulatory obligations, particularly for businesses undertaking significant licensing and compliance investment.
4. Consider proportionate safeguards, such as caps, thresholds or transitional arrangements for newly licensed entities, that limit disproportionate impacts without compromising the CSLR's ability to compensate eligible consumers.
5. Give affected businesses reasonable forward visibility of future special levy exposure so they can plan their finances and capital accordingly.

Conclusion

DECA supports a sustainable and effective CSLR that delivers meaningful protection for Australian consumers. Its funding arrangements must also preserve the financial sustainability, competitiveness and diversity of the regulated financial services sector. A framework that imposes disproportionate costs on smaller licensed businesses risks undermining the policy objective of encouraging responsible participation in Australia's regulated system.

We encourage Treasury to consider these implications in finalising the 2026–27 special levy allocation, and would welcome the opportunity to discuss the impact on digital asset businesses further.

About DECA

The Digital Economy Council of Australia (DECA), formerly Blockchain Australia, is the national industry association representing businesses across Australia's digital economy, including digital assets, blockchain, banking and payments, financial technology, artificial intelligence and agentic commerce. DECA works with government, regulators and industry to support clear, proportionate and innovation-enabling regulation that protects consumers, encourages responsible innovation and strengthens Australia's global competitiveness.

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