

5 August 2025

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Feedback
Regulatory Reform and Implementation
Australian Securities and Investments Commission
GPO Box 9827
Melbourne VIC 3001

**Consultation Paper 384 Submission by MERT Pty Ltd ACN 003 743 244 trustee of
Mechanical and Electrical Redundancy Trust (MERT)
Our ref: PHC/MER041-00002**

We act for the trustee of MERT and have been asked to make a submission as follows:

B1Q1 Definition of Redundancy Fund

1. MERT suggests the word “Redundancy” in the definition should be replaced with the words “termination of employment”. This would reflect the fact most funds payments on termination are not limited to “redundancy” as that term is ordinarily understood.

B1Q2

2. The trustee submits it should be in the widest terms set out in the paper.

B1Q3

3. The definition of “employee redundancy funds” should include a requirement that the fund is endorsed by the Commissioner of Taxation as an “approved worker entitlement fund.”

B1Q4

4. Not from MERT’s perspective.

B1Q5

5. No.

Option 1

C1Q1

6. MERT submits that if this option is adopted, no approved worker entitlement fund can provide benefits for those workers who currently receive benefits and who are entitled to benefits under Industrial Agreements.

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7. In particular the following provisions would be completely unworkable.
 - 7.1. The obligation to provide a product disclosure statement at or before the time the trustee issues the interest – s 1012B combined with the obligation to receive an eligible application in terms of s 1016A before issue of the interest.
 - 7.2. Employers make the contributions to meet their obligations under enterprise agreements and, in the case where an award applies, to fund the obligations under the award. Members do not sign application forms and the interest could not be issued before the trustee receives a signed application form from the proposed members. Employers could not meet their industrial agreement obligations.
 - 7.3. Cooling off in s1019B would mean a member could exercise their rights in the cooling off period to require the contributions to be paid to them.
 - 7.4. The obligation in s1017E to return the contribution if the interest is not issued within the required timeframe. If contributions cannot be allocated as required by the dealing with moneys received for a financial product before issue, then they are required to be returned to the employer by s1017E. There would be considerable scope for manipulation and non-compliance with the relevant enterprise agreement.
8. The situation is similar, if not the same as, superannuation funds, where an employer needs to make superannuation contributions on behalf of an employee to meet its award/industrial agreement /superannuation guarantee obligations. The employee does not sign an application form prior to the issue of the interest
9. Employees cannot be expected to sign application forms before contributions are accepted for them, as there is no reason why they should do so.
10. In the case of superannuation contribution this is expressly dealt with in s 1016A and notional sections ss 1012B(4A) and (4B) in Part 17 in Schedule 10A Corporations Regulations.
11. In the case of cooling off, trustees of redundancy funds need a similar relief to that of superannuation funds. Cooling off could be exercised, however, the moneys must be transferred, in this case, to another approved worker entitlement fund. Superannuation fund relief is provided for in Corporations Reg 7.9.66(2).
12. Hawking obligations are problematic. They are capable of applying to employers, and so employers may well be in breach of these provisions by complying with their employment obligations.
13. Design and distribution obligations would serve no purpose here.

C1Q2

14. No

C1Q3

15. Yes, the sector is unlikely to be to operate and the funds would cease to exist. This would deprive the workers whose entitlements are secured of the protections that the funds currently provide.

C1Q4

16. Cost assuming the Funds continue to exist would be the same as for Option 2(a).

Option 2(a)**D1Q1**

17. Absent specific legislation applying to redundancy industry funds, with the reliefs that ASIC proposes, and the additional reliefs set out in this response and the additional governance requirement in D1Q3 below, we expect this will provide a level of regulation that is appropriate having regard to the provisions in the Corporations Act that apply to retail investors and the unique characteristics of the funds.
18. A registered managed investment scheme has significant capital requirements and custodial requirements.
19. There is no capacity for the Union and Employer Association Shareholders to subscribe capital.
20. RG 166 would mean the appointment of a custodian meeting the requirements of RG 166 and also the capital requirements of 10% of the income of the trustee of MERT.
21. To fund the capital, the trustee would need to charge a trustee fee. Support for this approach can be found in the conduct of a number of industry superannuation funds in recent times, which have been the subject of judicial advice. See for example *Application by LGSS Pty Ltd as trustee for Local Government Super* (2021) NSWSC 1613.
22. In addition to funding the capital requirements by charging a trustee fee, gross up is required for tax as income tax at the company tax rates is payable on the trustee fee and it is also subject to GST. Gross up can typically be expected to be 10% GST and company tax of 25% on the amount net of GST, i.e. for each dollar of capital, the pre-tax amount is \$1.48.

D1Q2

23. Yes

D1Q3

24. Yes. There should be a governance requirement applying to the trustee. There should be the requirement of an equal representation model which could be adapted from the superannuation equal representation model in the Superannuation Industry (Supervision) Act 1993.
25. The board and trustee ownership would be an equal representation model – Equal employer and member directors with optional independent Chair with a two-thirds voting requirement.
26. Specific shareholder requirements - equal number of voting shares held by Registered Employer Associations and Unions and/or the ACTU.

D1Q4

27. General PDS requirements in sections 1013C, 1013D and 1013E are appropriate.
28. Section 1016A needs the reliefs that apply to employer sponsored members of superannuation funds.
29. Annual reporting - section 1017D needs modification as a large part of the reporting is not relevant.
30. The fees requirements in the Regs for PDS and annual reporting are not applicable and so not an appropriate requirement.
31. Section 1017E needs modification as like superannuation fund the moneys are already received on trust. Relief from the payment into a separate trust account. The superannuation fund type of relief in reg. 7.9.08C is appropriate.

32. Section 1019A cooling off; the superannuation fund type of relief in reg. 7.9.66(2) is appropriate.

D1Q5

33. Yes; for the reasons given in the first paragraph under D1Q1.

D1Q6

34. The most difficult practical parts are likely to be adapting trust deed terms to meet the requirements for registration of the constitution and also implementation of the MIS and AFSL regimes.

35. D1Q7 Additional Capital Costs

Additional costs would include:

ASIC AFSL Application Fee -	\$3,721 (Retail Clients, low complexity as at 1 July 2025)
AFSL Application (Estimated)	\$50,000
Preparation of Compliant Constitution	\$30,000
Dealing with ASIC registration requirements	\$20,000
Preparation of Compliance Plan	\$25,000
Draft PDS	\$50,000
Legal Fees	\$75,000
Compliance Manager	\$100,000 (pa) On-going -\$160,000.60 FTE
Additional insurance	\$25,000
Additional Audit Costs Compliance Plan	
Audit costs AFSL	
Audit costs MIS Accounts	
Audit costs public company trustee	
	\$100,000 pa
Custodian	\$100,000 pa
Compliance Committee (if required)	\$32,000pa
Preparation of cash flow plan and capital requirements	\$10,000
Website upgrade	\$10,000
Preparation AFSL Procedures - Conflicts, Risk Management, Dispute Resolution and Compensation	
Adequacy of Resources, Organisational Competence	\$30,000
AFSL training for Directors and Responsible Managers	\$6,000
Capital Requirements 10% of annual revenue	\$150,000

Option 2(b)

D2Q1

36. The consideration of the nature of the interests and type of product set out in D1Q1 above are equally applicable here.

D2Q2

37. Yes

D2Q3

38. The condition set out in D1Q3 above is equally applicable here.

D2Q4

39. The reliefs set out in D1Q4 are equally applicable here.

D2Q5

40. No

41. **D2Q6**

42. No.

43. **D2Q7**

44. Costs are less onerous than Option 2(a). As MERT does not support this approach, it has not attempted to cost this approach.

Option 3

E1Q1

45. Having regards to the amount of funds under management in the sector as well as volume of workers whose entitlements are protected, MERT questions whether Option 3 affords workers adequate protection.

E1Q2

46. If option 3 is to be adopted, all the conditions in proposal E1(a)–E1(e), are reasonable and practicable conditions of relief.

E1Q3

47. Yes. There should be a governance requirement applying to the trustee. There should be the requirement of an equal representation model which could be adapted from the superannuation equal representation model on the Superannuation Industry (Supervision) Act 1993.

48. The board and trustee ownership would be an equal representation model – equal employer and member directors with optional independent Chair with a two-thirds voting requirement.

49. Specific shareholder requirements - equal number of voting share held by Registered Employer Associations and Unions and/or the ACTU.

E1Q4

50. No.

E1Q5

51. No.

E1Q6

52. Additional compliance costs would be nominal.

53. MERT would need to seek external assistance to ensure MERT's current arrangements comply. MERT will need to identify and manage conflicts of interest are appropriate (estimated cost \$25,000).

E2Q1

54. A transition date should not be required.

Yours faithfully

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