

CORPORATE SUPERANNUATION ASSOCIATION Inc.

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Ms Jacqueline Rush
Senior Policy Adviser
Australian Securities and Investments Commission
GPO Box 9827
Melbourne VIC 3001

Dear Ms Rush

CORPORATE SUPERANNUATION ASSOCIATION SUBMISSION CONSULTATION PAPER 311 - INTERNAL DISPUTE RESOLUTION

We refer to ASIC's Consultation Paper, *Internal dispute resolution - Update to RG 165*, issued for public comment on 1 March 2019 ("the Paper"). The Corporate Superannuation Association provides comments on the Paper and on related matters below.

The Corporate Superannuation Association

Established in 1997, the Association is the representative body for large corporate not-for-profit superannuation funds and their employer-sponsors.

The Association now represents a total of 18 funds controlling \$51 billion in member funds, held in a total of some 274,000 individual accounts. Of these funds, 10 have outsourced trustee services but maintain significant employer interest through policy committees. In general, these funds are sponsored by corporate employers, with membership restricted to employees from the same holding company group, but we also include in our membership three multi-employer funds with similar employer involvement and focus.

A number of our funds have defined benefit divisions. Some of the smaller funds have their place in the pension fund structures of international groups, hence play an important role in the care and welfare of the worldwide workforces of these groups.

Within the Paper

Approach to AS/NZS 1002:2014: Proposal B1

The definition of “complaint” in AS/NZS 1002:2014 (the **Standard**), includes expressions of dissatisfaction “to or about” an organisation, related to its products, services, staff or the handling of a complaint, where a response or resolution is explicitly or implicitly expected, or legally required.

ASIC states that it considers that this should capture complaints made by identifiable consumers on a firm’s own social media platforms.

We acknowledge ASIC’s obligation, in framing amendments to RG 165, to take into account the Standard and we accept that the definition in the Standard is very broad. However, we question whether remarks by all “identifiable consumers” should receive the same attention, given that the necessarily limited scope of application set by the *Corporations Act 2001* (the **Corporations Act**) and the AFCA Complaint Resolution Scheme Rules for superannuation funds.

The external dispute resolution process has as its focus the protection of those with interests or potential interest in the fund. We would like ASIC to consider the restricted scope of the external complaints process under AFCA in relation to superannuation complaints, and to clarify in RG 165 the application of the “superannuation complaint” definition. We believe that internal processes for handling complaints should take account of the distinction between superannuation complaints, as defined, and other complaints, with a primary focus on complaints handling that benefits members of the fund.

“Superannuation complaint” is closely defined, at subsection 1053(3) of the Corporations Act, and access to the complaints processes for superannuation funds is restricted; the main categories of potential complainants listed being members, former members, and existing or potential beneficiaries of the fund.

The scope of the complaints has also been restricted, exclusions being set out in the Corporations Act and in the AFCA Complaint Resolution Scheme Rules. The limitations in application have been framed so as to provide protections, primarily, for those with interests in a superannuation fund. The internal dispute process has been intended as a first step in resolving such inquiries or complaints prior to referral to the external complaints body (although there is now scope for the IDR process to be cut out through immediate referral to AFCA: see further discussion below).

Complaints to or about an organisation, about products, services and staff

The AS/NZS 1002:2014 definition expands a fund’s IDR obligations to persons and matters which are specifically excluded from the external dispute resolution framework. It is helpful for ASIC to provide guidance on handling these additional areas of potential dissatisfaction. We believe that the other areas identified are matters for separate attention from the trustee. However, we believe that a trustee’s responsibilities in this area should not be made open-ended and uncertain. We highlight difficulties with the use of the word “about”, and the proposed inclusion of complaints about staff.

(a) “About” an organisation

We are concerned about the proposed requirement for trustees to address complaints “about” an organisation, rather than “to” an organisation. It is clear that when a complaint is addressed to an organisation, it can identify it and review it, but this is not necessarily the case with a complaint about it.

CORPORATE SUPER ASSOCIATION

However, it is arguable that the rider “..where a response or resolution is explicitly or implicitly expected or legally required” would automatically exclude complaints “about” an organisation, and restrict the field to complaints “to” an organisation. Hence, it would be clearer and economical to remove the words “or about” from the definition as applied in RG 165.

(b) Complaints about staff members

Concerns about staff members would fall outside the regime contemplated in the Corporations Act for ACFA’s attention and we advocate a separate trustee process for dealing with these.

Response to B1Q1: Addressing comments made in internal and external media platforms

We agree that it is desirable that a fund address in an appropriate way any complaints, comments or allegations made on the fund’s own social media channels. We believe that a process is required to filter the comments made in the fund’s own media to determine whether any of these are made by persons and in relation to matters that fall within the definition of “superannuation complaint”. Where they do, these should be handled as required under the superannuation complaints provision of the Corporations Act and AFCA’s Rules. Our funds carry out these procedures.

However, the addressing of complaints of this nature when they are outside AFCA’s jurisdiction requires specific and appropriate judgement by the trustee. Complaints about products and services that are outside AFCA’s jurisdiction, but made to the trustee, should be addressed.

Publicly voiced allegations and complaints, e.g. in the press and on external media platforms, require addressing at the trustee’s discretion and may require skills and processes which go beyond traditional processes for handling complaints made by identifiable members and beneficiaries to the trustee. Because of the difficulties in identifying these, we do not believe that these matters can be addressed prescriptively within a fund’s IDR process.

Reduction in maximum IDR timeframes (Proposal B11)

We oppose the proposed reduction in time limit for IDR for superannuation trustees, for the following reasons.

Many complaints will refer to benefit payments and insurance payments. To evaluate such complaints, time is required for gathering data.

Delays in gathering data and responding to the inquiry or complaint are introduced by:

- the need to address privacy issues;
- the need to obtain medical reports for disability claims;
- delays in response from outside parties and the complainant;
- the fact that much of the data gathering relies on sources and events outside the trustee’s control.

The result is that the existing time limit of 90 days for superannuation complaints emerges in many instances as being too short, and further reduction imposes enormous difficulties.

Other Emerging Issues

We wish to raise a matter which is not canvassed in the Paper, but which is related, and of grave concern to our trustees.

CORPORATE SUPER ASSOCIATION

The AFCA Rules on superannuation complaints, in contrast to the previous regime under the *Superannuation (Resolution of Complaints) Act 1993*, permit a complainant to refer a complaint direct to AFCA without the need to make use of the fund's internal complaints procedure as a first step. The old process where the internal complaints procedure was a necessary first step for a complainant before referral to the Superannuation Complaints Tribunal, worked well for our funds, as it enabled many inquiries and minor issues to be resolved directly with the trustee, and acted as a filter to address acknowledged complaints, deal with minor issues, or to address, or refer to other authorities, complaints which were out of the Superannuation Complaints Tribunal's jurisdiction. The overall effect was to enable trustees to deal with many issues, and reduce the volume of complaints which arrived at the Tribunal.

In the current circumstances, members frequently go straight to AFCA, even with trivial issues which could be resolved by funds' call centres. The volume of matters reaching AFCA is thus significantly increased. An additional difficulty arises because AFCA filters these for matters out of jurisdiction, but does not always succeed in filtering out the trivial (or matters outside jurisdiction) before proceeding with logging a complaint. The trustee therefore receives notification from AFCA of the matter as a full-blown complaint whereas in the past the matter could very simply have been resolved through the call centre or other trustee inquiry service.

Members report that this option has increased the difficulty for the Trustee to reach resolution with members. Not only does it add additional work for AFCA, it also duplicates work for the trustee, first dealing with a complaint where the member has a reduced incentive to achieve an immediate resolution, and then dealing with the complaint through AFCA.

We believe that it would reduce the workload for all concerned if the requirement to go through the internal complaints process were re-established for superannuation complaints.

We are happy to discuss the above further as required.

Yours sincerely



Mark N Cerché

Chairman

Corporate Superannuation Association Inc

Copy To Anne-Marie Howley, AFCA