

**ACIRT SUBMISSION
ASIC CONSULTATION PAPER 384**

B1	<p>Rename 'employee redundancy funds'. Use the term 'employee entitlement schemes' and adopt the following definition:</p> <p>A scheme to which employers may make, or are required by an award or agreement to make, contributions where the primary objective of the scheme is to fund:</p> <p>(a) benefits payable on redundancy; and/or</p> <p>(b) long-service leave entitlements, for employees of employers.</p> <p>The scheme may also fund other entitlements that are incidental to employment.</p> <p>We would use the new term and definition in relevant guidance and any relief we grant.</p>	
FEEDBACK		
B1Q1	Do you agree with our proposed new term and definition? Please provide reasons.	Redundancy has a connotation under taxation law that an employer no longer needs a job to be done by anyone. Some current funds provide benefits on any sort of termination of employment. ASIC may wish to consider using the more general term "termination of employment", rather than "redundancy".
B1Q2	Are there other employee entitlements (beyond redundancy and long-service leave) that should be included as primary objectives in our new definition? Please provide details.	Not at this stage.
B1Q3	Is there an alternative definition that you consider is preferable? For example, should we require that an 'employee entitlement scheme' is an 'approved worker entitlement fund', as defined under s58PB of the Fringe Benefits Tax Assessment Act 1986 (FBT Act)? Please provide reasons.	<p>While it may be beyond the ambit of ASIC, it would be desirable that payments into a fund registered by ASIC would automatically obtain the exemption from FBT afforded by endorsement as an AWEF by the ATO.</p> <p>Otherwise, 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."</p>

B1Q4	Do you consider that our definition should include any further limitations on the objectives of the fund, or are there any specific arrangements that should be excluded from the definition (with the requirements that apply to these excluded arrangements instead considered on a case-by-case basis)? If so, please provide details.	Not from ACIRT's perspective.
B1Q5	For existing fund operators, will changing the definition as proposed affect the operation of the fund? If so, please provide details of the impact.	Changing the definition would not per se affect the operation of the fund.
C1	Under Option 1, we would allow ASIC Instrument 2015/1150 to expire and require fund operators to fully comply with the Corporations Act.	
C1Q1	Please provide your feedback on this option, including reasons in support of your views.	<p>Assuming ASIC is of a mind not to renew the Relief, we do not support Option 1.</p> <p>Option 1 is not practical given the way most current funds operate.</p> <p>Option 1 would require funds to provide to a prospective member a PDS, and for the Fund to receive a signed application form from an employee prior to the Fund being able to issue an interest following an employer making their first contribution for the employee. The way that most funds operate is that employees vote to approve an Enterprise Agreement (EA), that in addition to their normal wages, salary and superannuation provides for contribution (Usually calculated on a per week basis) into a nominated employee entitlement fund.</p> <p>After the relevant EA is voted by the members and ratified by the Fair Work Commission, their employer registers with ACIRT, and on receipt of their first contribution, the employee becomes a member of the fund and the fund advises the employee that they are a member of the fund.</p> <p>Requiring a member to sign an Application Form before accepting their first contribution is simply impractical. ACIRT enrolls on average 600 new members each month.</p> <p>If contributions cannot be allocated as required by the dealing with moneys received for a financial product before issue, then the contribution is required to be returned to the employer by S1017E. There would be considerable scope for manipulation and non-compliance with the relevant enterprise agreement.</p> <p>Once interests are issued, the cooling off rules in s1019B would mean the member could exercise his/her rights and require payment to the member of the contributions received by the trustee. 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.</p> <p>Design and distribution obligations would serve no purpose here.</p>

C1Q2	Is this your preferred option for the regulation of employee redundancy funds? If so, please explain why you prefer it over Option 2 and Option 3.	<p>Given that the fund, apart from Awards, is only open to contributions from employers pursuant to enterprise agreements initiated by unions represented on the boards of operators of certain funds, and the difficulties of complying with Option 1 outlined above, we do not believe that Option 1 is warranted.</p> <p>ACIRT's preference is Option 2(b).</p>																																												
C1Q3	Do you foresee any practical difficulties with this option?	<p>Even with Option 2(b) relief would be required from requirements including:</p> <ul style="list-style-type: none">the obligation to hold members' meetings;the obligation to provide a disclosure statement and receive a signed application form from the employee prior to issuing the interest in respect of contributions;the contents of a disclosure statement, given that fees and charges are generally not deducted at an individual member level; andthe obligation to return the contribution to the member if the member exercises their cooling off rights.																																												
C1Q4	For existing fund operators, what additional compliance costs do you expect to incur if this option is adopted? Please provide specific details and dollar estimates.	<p>Additional costs would include:</p> <table><tr><td>ASIC AFSL Application Fee -</td><td>\$3,721 (Retail Clients, low complexity as at 1 July 2025)</td></tr><tr><td>AFSL Application (Estimated)</td><td>\$50,000</td></tr><tr><td>Preparation of Compliant Constitution</td><td>\$30,000</td></tr><tr><td>Dealing with ASIC registration requirements</td><td>\$20,000</td></tr><tr><td>Preparation of Compliance Plan</td><td>\$25,000</td></tr><tr><td>Draft PDS</td><td>\$50,000</td></tr><tr><td>Legal Fees</td><td>\$75,000</td></tr><tr><td>Compliance Manager</td><td>\$100,000 (pa)On-going -\$160,000).60 FTE</td></tr><tr><td>Additional insurance costs</td><td>\$25,000</td></tr><tr><td>Additional Audit Costs Compliance Plan</td><td></td></tr><tr><td>Audit costs AFSL</td><td></td></tr><tr><td>Audit costs MIS Accounts</td><td></td></tr><tr><td>Audit costs public company trustee</td><td></td></tr><tr><td></td><td>\$100,000 pa</td></tr><tr><td>Custodian</td><td>\$100,000 pa</td></tr><tr><td>Compliance Committee (If Required)</td><td>\$32,000pa</td></tr><tr><td>Preparation of cash flow plan and capital requirements</td><td>\$10,000.</td></tr><tr><td>Website upgrade</td><td>\$20,000.</td></tr><tr><td>Preparation AFSL Procedures - Conflicts, Risk Management, Dispute Resolution and Compensation</td><td></td></tr><tr><td>Adequacy of Resources, Organisational Competence</td><td>\$30,000</td></tr><tr><td>AFSL training for Directors and Responsible Managers</td><td>\$6,000</td></tr><tr><td>Capital Requirements 10% of annual revenue</td><td>\$250,000</td></tr></table>	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 costs	\$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	\$20,000.	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	\$250,000
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 costs	\$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	\$20,000.																																													
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	\$250,000																																													

C2	If Option 1 is adopted, we propose that a transition period would apply until 1 September 2026 - extend ASIC Instrument 2015/1150 until this date.	
C2Q1	Do you agree with ASIC providing a transition period if this option is adopted? Please provide reasons.	<p>As noted above, Option 1 is simply not practicable. It would be extremely difficult to require workers (members) to sign up to become a member of an AWEF prior to issuing an interest in the Fund for a contribution being made on their behalf.</p> <p>It is not an overstatement to state that the sector could not 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.</p> <p>The Enterprise Agreements referred to above would need to be redrafted and there would need to be considerable consultation with the various stakeholders - industrial organisations, members and employers who contribute to the funds.</p>
C2Q2	If a transition period is provided, do you agree with the proposed end date of 1 September 2026? Please provide reasons.	Provided that ASIC decides which option it is adopting by 30 November 2025, an end date of 1 September 2026 would be appropriate.
D1	<p>Under Option 2(a):</p> <ul style="list-style-type: none"> a) ASIC would grant relief to fund operators and persons that provide financial services in relation to the fund. The relief would be limited to the requirements of the Corporations Act that are not practicable to comply with, given the nature of the fund; b) fund operators would be required to notify ASIC of their reliance on the relief; and c) fund operators would be required to hold an AFS licence and comply with other applicable requirements of the Corporations Act. 	
D1Q1	Please provide your feedback on this option, including reasons in support of your views.	<p>Given that the fund, apart from Awards, is only open to contributions from employers pursuant to enterprise agreements initiated by unions represented on the boards of operators of certain fund, we do not believe that Option 2(a) is warranted.</p> <p>The nature of the benefits are not typical of benefits subject to the managed investment scheme provisions in Chapter 5C.</p> <p>There is a disconnect here, because the employer makes contributions to the Fund, but the Fund does not give the employer contributors any rights. The rights are with the non-contributor beneficiaries namely the employees. The Fund has to hold the money for the members who hold the interests in the scheme not the employers who contributed the money.</p> <p>It is more clearly a risk product than a managed investment scheme.</p> <p>The definition of a risk product in the Act in Section 763A is a facility through which, or through the acquisition of which, a person manages financial risk. Manages financial risk is defined in s763C as</p>

	<p>manages the financial consequences to them of particular circumstances happening; or avoid or limit the financial consequences of fluctuations.</p> <p>The employers are making a payment to transfer the risk of having to pay redundancy payments to their staff from the employer's balance sheet to the Fund. In this way an employer avoids the financial consequences of having to pay the employee the whole redundancy entitlement at the time the employee's employment is terminated</p> <p>Where an employer who is subject to the award contributes to a redundancy fund, clause 41.4 of the Building and Construction General On-site Award 2020 provides for offset of the employees redundancy pay entitlement in whole or in part by reference to the amount contributed.</p> <p>In the case of enterprise agreements there is typically a requirement to pay a specified amount per week per employee to a named fund. The effect of paying to an industry fund is that the redundancy provisions in s119 of the Fair Work Act 2009 do not apply – s123(4) Fair Work Act 2009.</p> <p>Funds also need to address the issue of what happens if there is a loss, and how and to what extent account balances are protected by restrictions on distribution of income until investment losses are made good, or whether the account balance is actually debited for the loss.</p> <p>The interests in income are contingent, particularly where losses have to be made good first before any income can be distributed.</p> <p>Redundancy funds are not run for profit for the trustee. Trustee shareholders are Unions and Employer Associations who subscribe nominal capital.</p> <p>A registered managed investment scheme has significant capital requirements and custodial requirements.</p> <p>There is no capacity for the Union and Employer Association Shareholders to subscribe capital.</p> <p>RG 166 would mean the appointment of a custodian meeting the requirements of RG 166 and also the capital requirements of 10% of ACIRT Trustee income.</p> <p>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.</p> <p>As far as the trustee is aware, there have been no issues with the current arrangements in terms of security of assets, whereby the trustee holds the money in accordance with the terms of the Trust Deed.</p> <p>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 under 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.</p> <p>Option 2(b) would mean redundancy funds are regulated like other risk products</p>
--	---

D1Q2	Do you agree with the provisions from which relief would be granted? If not, why?	Yes.
D1Q3	Do you consider the relief should be subject to any additional conditions? Please give reasons. For example, should we impose a condition for tailored information to be provided to employers and employees about the fund?	<p>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. The board and trustee ownership would be an equal representation model –</p> <ul style="list-style-type: none"> • Equal employer and member directors with optional independent Chair with a two-thirds voting requirement. • Specific shareholder requirements; • Equal number of voting shares held by Registered Employer Associations and Unions and/or the ACTU.
D1Q4	Do any of the other provisions in Table 1–Table 4 in the appendix also result in compliance issues that require relief? If so, please provide details.	<p>Yes.</p> <ul style="list-style-type: none"> • A condition for tailored information to be provided to employers and employees about the fund. • Member information could comply with ss 1013C and D but not the regulations requiring financial information. Member contributions are not normally reduced by fund costs, as they usually come out of fund earnings. • Modification of the requirement to provide a PDS and receive an application form before issuing the interest is required. Relief based on that for superannuation funds in S1016A and notional sections ss 1012B(4A) and (4B) in Part 17 in Schedule 10A Corporations Regulations is required. • Cooling off in s1019B means a member could exercise their rights in the cooling off period to require the contributions paid to them. The 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) • Modification of requirements as to holding of money where the interest is not issued S1017E. Relief from the payment into a separate trust account. The superannuation fund type of relief in reg. 7.9.08C is appropriate. • Annual reporting - section 1017D needs modification as a large part of the reporting is not relevant.

D1Q5	Is this your preferred option for the regulation of employee redundancy funds? If so, please explain why you prefer it over Option 1, Option 2(b) and Option 3.	No. Option 2(b) is our preferred option.
D1Q6	Do you foresee any practical difficulties with this option?	We believe that a 1 September 2025 transition date is unrealistic and ASIC should consider 1 March 2027.
D1Q7	For existing fund operators, what additional compliance costs do you expect to incur if this option is adopted? Please provide specific details and dollar estimates.	Additional costs would be the same as for C1Q4.

D2	<p>Under Option 2 (b):</p> <p>(a) ASIC would grant relief to fund operators and persons that provide financial services in relation to the fund from:</p> <ul style="list-style-type: none"> (i) the managed investment provisions in Table 2, other than the obligation to hold the fund property on trust for the members; and (ii) requirements of the Corporations Act that are not practicable to comply with given the nature of the fund as outlined under Option 2(a); <p>(b) fund operators would be required to notify ASIC of their reliance on the relief; and</p> <p>(c) fund operators would be required to hold an AFS licence and comply with other applicable requirements of the Corporations Act. This would include an obligation to prepare annual audited financial statements for the fund.</p>	
D2Q1	Please provide your feedback on this option, including reasons in support of your views.	The consideration of the nature of the interests and type of product set out in D1Q1 above are equally applicable here.
D2Q2	Do you agree with the provisions from which relief would be granted? If not, why?	Yes
D2Q3	Do you consider the relief should be subject to any additional conditions? Please give reasons. For example, should we impose a condition for tailored information to be provided to employers and employees about the fund?	The conditions set out in D1Q3 above are equally applicable here.
D2Q4	Do any of the other provisions in Table 1–Table 4 in the appendix also result in compliance issues that require relief? If so, please provide details.	Yes, the reliefs set out in D1Q4 are equally applicable here.
D2Q5	Is this your preferred option for the regulation of employee redundancy funds? If so, please explain why you prefer it over Option 1, Option 2(a) and Option 3.	<p>This is ACIRT's preferred option.</p> <p>Absent specific legislation applying to redundancy industry funds, with the reliefs that ASIC proposes and the additional reliefs set out above and the additional governance requirement in D1Q3 above, we expect this option will provide a level of regulation that is appropriate, having regard to possible provisions in the Corporations Act that could be applied and the unique characteristics of the relevant funds.</p>
D2Q6	Do you foresee any practical difficulties with this option?	No.

D2Q7	For existing fund operators, what additional compliance costs do you expect to incur if this option is adopted? Please provide specific details and dollar estimates.	Additional costs would include: ASIC AFSL Application Fee - \$3,721 (Retail Clients, low complexity as at 1 July 2025) AFSL Application (Estimated) \$50,000 Legal Fees \$40,000 Compliance Manager \$100,000 (pa)On-going -\$160,000).60 FTE Additional Audit Costs \$20,000 Additional Insurance \$25,000 Draft Information Doc \$20,000 Additional Audit Costs AFSL \$30,000 Preparation of cash flow plan and capital requirements \$10,000 Website upgrade \$20,000 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
D3	If ASIC adopts either Option 2(a) or Option 2(b), transition period would apply until 1 September 2026 is proposed. ASIC Instrument 2015/1150 would be extended until this date.	
D3Q1	Do you agree with ASIC providing a transition period if this option is adopted? Please provide reasons.	Yes. There would be a considerable amount of work involved.
D3Q2	If a transition period is provided, do you agree with the proposed date of 1 September 2026? Please provide reasons.	The transition date should depend of the date that ASIC determines which Option it will apply.

E1	<p>Under Option 3, ASIC would continue the existing relief in ASIC Instrument 2015/1150, with additional conditions. Under the conditions of the relief, fund operators would need to:</p> <ul style="list-style-type: none"> (a) hold the fund property on trust for the members and separately from the property of the operator and any other scheme; (b) make publicly available key information about the fund (e.g. by uploading it on the fund's website), including details of: <ul style="list-style-type: none"> (i) what contributions will be used for; (ii) the rights of members, including their rights to receive payments from the fund and whether members will share in the returns or losses of the fund; (iii) the availability of annual financial statements for the fund (see the condition in proposal E1(c)); (iv) any agreements under which money may be paid from assets of the fund to related parties or affiliates of the fund operator; (v) any amounts that may be deducted from the assets of the fund as fees; (vi) relevant risks; and (vii) how complaints from employers and employees will be dealt with; (c) prepare annual audited financial statements for the fund and make them publicly available (e.g. by uploading it on the fund's website); (d) have in place adequate arrangements for the management of conflicts of interest; and (e) notify ASIC in writing of reliance on the exemption and the name of the fund in relation to which the relief is being relied on. Fund operators must give this notice within 21 days of first relying on the relief.
E1Q1	<div> <div>Please provide feedback on this option, including reasons in support of your views.</div> <div> <p>We have no objections to Option 3.</p> <p>Given however, the amount of funds under management in the sector as well as volume of workers whose entitlements are protected, we question whether Option 3 affords workers adequate protection.</p> </div> </div>

E1Q2	Please provide feedback on each of the conditions in proposal E1(a)–E1(e), including whether you consider it would be a reasonable and practicable condition of relief. If you believe there should be no conditions on the relief, please explain why each proposed condition would not be reasonable or practicable.	We believe all the conditions in proposal E1(a)–E1(e), are reasonable and practicable conditions of relief.
E1Q3	Are there are any additional or alternate conditions that would be reasonable and practicable?	No
E1Q4	Is this your preferred option for the regulation of employee redundancy funds? If so, please explain why you prefer it over Options 1 and 2.	No, given the size of the sector and the potential impact on the sector of one of the existing funds was unable to pay out any of the entitlement owed to members.
E1Q5	Do you foresee any practical difficulties with this option?	No
E1Q6	For existing fund operators, what additional compliance costs do you expect to incur if this option is adopted? Please provide specific details and dollar estimates, including for each individual proposed condition.	Additional compliance costs would be nominal. We would need to seek external assistance to ensure our current arrangement to identify and manage conflicts of interest are appropriate (estimated cost \$25,000).
E2	If Option 3 is adopted, a transition period would not apply. The remade relief, with conditions, would apply from 1 April 2026.	
E2Q1	Do you agree with ASIC not providing a transition period if this option is adopted? Please provide reasons.	The transition date should depend on the date that ASIC determines which Option it will apply.