



AUSTRALIAN INSTITUTE of
SUPERANNUATION TRUSTEES

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Australian Securities and Investments Commission
Level 7, 120 Collins Street, Melbourne, 3000
By email: remediation@asic.gov.au

Dear Amanda

Consultation on ASIC CP 335 Consumer remediation

PART TWO – GENERAL FEEDBACK

The Australian Institute of Superannuation Trustees (AIST) is responding to the request for feedback on the key issues we have identified for updating *Regulatory Guide 256 Client review and remediation conducted by advice licensees*

As agreed, AIST is providing feedback in two parts, the first focusing on any tax issues in relation to remediation and superannuation and the second on any other areas requiring clarification.

Feedback from AIST member funds

Overall, AIST member funds did not raise any major questions or concerns about the consultation paper. A few areas were identified that would benefit from further clarification.

Timeframes for remediation .

- How does these align with the Hayne Royal Commission No 1 Bill in terms of timeframes and process? Specifically, as stated in the EM
 - 1.1 The obligation on Australian financial services licensees and credit licensees to investigate and remediate contains two limbs:
 - first, when a licensee detects misconduct, the licensee is required to:
 - within 30 days, inform potentially affected clients of misconduct; and
 - investigate the nature and full extent of any misconduct (including the loss or damage the affected client or consumer has suffered or will suffer) within a reasonable amount of time; and
 - second, once an investigation is complete, the licensee is required to:
 - within 10 days, inform the affected client of the nature and full extent of the misconduct; and
 - within 30 days, remediate the client's or consumer's loss

- There are particular challenges for remediation of exited and deceased members which mean that 30 days may not be achievable
- Will there be clarification of when 'the clock' starts and stops? For example, in a recent remediation of exited members a fund had to wait to be granted relief from ASIC from issuing a PDS to those members when new accounts were created to receive remediation monies.

Record keeping

- CP mentions 7 years – will this impact other record keeping requirements?

Successor Fund Transfers

- When funds merge with each other there is often a change in core administration platforms and the information available to the receiving fund is often limited to critical data points, rather than the complete detailed member record. It can be difficult to re-create data flows once it has moved from one administration platform to another.

Use of RBA rate

- If the remediation cover a long period of time it would be useful to receive some guidance on how to use the RBA rate which will fluctuate. For example, for an exited member does the fund look at the RBA rate for each year since the member exited?

Beneficial assumptions and acting in members best interests

- In some scenarios there will be members who benefit from an error/issue and those that have suffered a loss as a result of it so some members are overpaid and some underpaid e.g insurance premiums.
- Super fund trustees must consider the best interests of all members when considering both beneficial assumptions and recovering monies from exited members as well as consider the cost of such recovery action and likelihood of success.

General observations/suggestions

- Now that all super funds must hold an AFSL, it would be useful for guidance to contain more superannuation specific examples
- Greater clarity on what constitutes a compliance failure and an incident vs a remediation program.

For further information regarding our submission, please contact _____ at _____

Yours sincerely,

Chief Executive Officer

The Australian Institute of Superannuation Trustees is a national not-for-profit organisation whose membership consists of the trustee directors and staff of industry, corporate and public-sector funds.

As the principal advocate and peak representative body for the \$1.4 trillion profit-to-members superannuation sector, AIST plays a key role in policy development and is a leading provider of research.

AIST provides professional training and support for trustees and fund staff to help them meet the challenges of managing superannuation funds and advancing the interests of their fund members. Each year, AIST hosts the Conference of Major Superannuation Funds (CMSF), in addition to numerous other industry conferences and events.