

Submission to ASIC

Consultation Paper 384: Employee Redundancy Funds (June 2025)

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Respondent: National Electrical and Communications Association (NECA)

Date: 17 July 2025

Prepared by: [REDACTED]

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1. Purpose and Context

NECA submits this response:

- As a national employer association representing over 6,500 electrical and communications contractors across Australia;
- As a sponsor of two major redundancy trusts — Protect and MERT — which support financial resilience, skills retention, and redundancy protection for tens of thousands of workers;
- To advocate for reform that:
 - Preserves the Fringe Benefits Tax (FBT) exemption for employer contributions (sections 58PA/58PB of the Income Tax Assessment Act);
 - Ensures strong governance, transparency, and public accountability of redundancy trusts;
 - And avoids regulatory overreach that would compromise their industrial and financial function.

2. Evaluation of ASIC's Reform Options

NECA supports Option 2a, and does not support Options 1, 2b, or 3.

Option 1 – Rejected: Misaligned Regulatory Burden

Option 1 would impose full retail managed investment scheme (MIS) compliance requirements — including hawking bans, non-solicitation rules, cooling-off periods, and retail disclosure obligations.

This approach is:

- Misaligned with the nature of redundancy trusts, which are employer-funded industrial vehicles, not retail financial products;
- Operationally unworkable — many redundancy funds would be forced to cease operating or consolidate;

- Costly for employers — imposing compliance regimes irrelevant to their role as contributors, not beneficiaries;
- And unnecessary — redundancy trusts do not pose the same risks as speculative investment schemes.

Option 2a – Supported: Fit-for-Purpose Governance Reform

Option 2a proposes a regulatory regime which, with additional equal representation governance requirements, would be similar to that governing superannuation funds, including:

- A requirement for independent directors,
- Stronger governance and risk frameworks,
- Improved financial disclosure and reporting, and
- Exemptions from consumer-focused obligations (e.g. non-solicitation and cooling-off periods).

NECA supports this option because it:

- Preserves FBT exemptions, safeguarding a critical cost structure for employers;
- Enhances transparency and accountability, responding to public expectations and recent media scrutiny;
- Avoids overregulation, by exempting employer-based funds from inappropriate consumer investment rules;
- And builds public confidence in the system without undermining the operational viability of funds like Protect and MERT.

Option 2b – Not Supported: Insufficient Transparency and Incomplete Reform

Option 2b proposes a “light touch” model focused on minimal governance enhancements without materially increasing disclosure, accountability, or oversight.

NECA does not support Option 2b, because:

- It fails to address longstanding visibility issues — the lack of consistent public reporting on how redundancy funds operate, distribute surpluses, and manage governance structures;
- It does not mandate trustee duties, robust risk or compliance frameworks, nor does it require independent directors;
- It does not mandate the director duties that would apply to a registered managed investment scheme;
- There is a lack of statutory sanctions that apply to the trustee and its directors for failure to comply with the proposed financial reporting and audit requirements;
- It represents a compromise that preserves opacity without delivering public confidence;

- It risks becoming a "cosmetic reform", adopted as a path of least resistance, rather than a meaningful step forward.

NECA believes that Option 2b would entrench ambiguity, and continue the uncertainty that has led to regulatory concern in the first place. A more credible, enduring solution is required — one that Option 2a with the additional governance requirements that NECA suggests would provide.

Option 3 – Not Supported: The Status Quo Is Not Acceptable

Option 3 proposes retaining the existing regulatory environment, under which redundancy trusts:

- Operate without a licensing or reporting regime,
- Have no mandated governance or disclosure obligations,
- And distribute surpluses without consistent transparency.

NECA does not support this option, because:

- It ignores persistent concerns raised by government, media, and employer groups about governance failings in the sector;
- It fails to modernise the sector's oversight in line with best practice, including that expected of superannuation, worker entitlement, and not-for-profit funds,
- And it would allow problematic practices to continue unchecked — including inconsistent surplus distribution reporting and inadequate conflict management.

Option 3 is a missed opportunity for reform and would erode public confidence in the sector.

4. Governance and Industry Integrity

NECA supports the following minimum standards under any new framework:

- Adoption of an equal representation model adapted from the superannuation model;
- At least two independent board members on every redundancy trust;
- The financial reporting and audit obligations that apply to registered managed investment schemes apply;
- Annual reporting of all distributions – including amounts, recipients and intended use;
- A consistent fund wide risk and compliance framework;
- Retention of employer control and funding without requiring unnecessary product disclosure for non-retail participant.

These measures will lift the standard of governance, ensure appropriate checks and balances, and reimburse and reinforce public trust without compromising fund viability.

5. Cost-Benefit Overview

Regulatory Area	Expected Costs	Expected Benefits
Independent Directors	\$50 - \$100k per fund	Improved decision making, reduced capture risks
Financial Disclosure	Reporting / admin costs	Transparency, accountability, stakeholder confidence
Compliance Framework	System setup and reviews	Risk mitigation, audit readiness, consistent performance monitoring
Avoided overregulation	N/A	Avoids forcing funds into MIS-Like structures that are unworkable

6. Fringe Benefits Tax (FBT) Exemption

NECA reaffirms that retaining FBT exemptions under s58PA/58PB is non-negotiable.

- Employer contributions to approved redundancy funds are not discretionary employee benefits; they are industrially mandated obligations.
- Removing FBT exemptions would immediately increase cost pressures on employers, particularly SMEs.

Option 2a allows continued compliance with ATO endorsed frameworks, protecting this long standing concession.

7. Equal Representation Model

NECA is of the view that any relief should include strengthened governance requirements:

- The board should be an equal representation model – equal employer, member and independent directors with a two thirds voting requirement – adopted with further governance refinement from the equal representation model in the superannuation legislation;
- At least two independent board members;
- Specific share holder requirements – equal number of voting shares held by registered employer associations and unions;

8. Definition of “employee redundancy funds

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”.

The definition of “employee redundancy funds” should be limited to:

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:

- (a) benefits payable on termination of employment; and/or
- (b) long-service leave entitlements, for employees of employers.

The definition of “employee redundancy funds” should also include a requirement that in the case of industrial instruments entered into after the “Transition Period”, funds can only accept contributions where the industrial instrument allows each employee to specify the fund to which contributions are to be made on the employee’s behalf.

9. Industry Context and Reform Momentum

Recent reporting, including the Watson SC review and media coverage of surplus distributions and misconduct, has highlighted:

- The need for governance reform and
- The danger of trusts being used for non-entitlement purposes without adequate scrutiny.

NECA believes redundancy funds must:

- Be limited to industrial and worker benefit functions,
- Be barred from partisan or unlawful financial activity,
- Be subject to the financial reporting and audit obligations that apply to registered managed investment schemes, and
- Be required to publicly disclose all distributions, including those made to employer and employee stakeholders.

10. Recommendation and Next Steps

NECA recommends that ASIC:

- Adopt Option 2a as the regulatory framework for redundancy trusts,
- Reject Options 1, 2b, and 3 for the reasons stated above,
- Work with industry to develop tailored transitional arrangements, and
- Ensure FBT exemptions remain protected under the final model.

We also request ASIC publish a summary of submissions and next steps for implementation.

To arrange a meeting or discuss this submission further, please contact:


W www.neca.asn.au