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Australian Securities & Investment Commission

Email: rri.consultation@asic.gov.au

RE: feedback on options for regulation of employee redundancy funds

The Australian Resources & Energy Employer Association (**AREEA**) welcomes the opportunity to provide feedback on the requirements that should apply to employee redundancy funds under the *Corporations Act 2001* (**Corporations Act**) once the transitional relief ASIC has granted expires on 1 April 2026.

Who we are

As the national employer association for Australia's mining, oil and gas and service contracting sectors, AREEA is the largest and most diversified representative of the resources and energy industry and is also the sector's industrial relations specialist group.

AREEA represents our members on the National Workplace Relations Consultative Committee, the Council on Industrial Legislation and has had a significant role in all IR developments and reforms since Australia's federation.

The imperative of regulatory oversight

Time has long past for employee redundancy funds to rely on ASIC relief from relevant provisions of the Corporations Act.

The reason is twofold.

First, as ASIC has identified, these funds have now grown to hold more than $2 billion in employee entitlements. It contravenes Australia's strong record of prudential governance that fund managers at the helm of such a sizeable capital pool should remain loosened from obligations normally applied to managed investment schemes. For example, there are no statutory financial reporting obligations. You must have an Australian Financial Services (**AFS**) licence (ensuring standards and managing conflicts of interest) in order to conduct a financial services business – *except* if that business is an employee redundancy fund.

We agree that the funds are likely to constitute a managed investment scheme and therefore a financial products regulated under the Corporations Act.

Second, this lack of transparency invites a race to the bottom.

Funds are administered by private trustee companies whose directors are appointed by trade unions and employer groups, who – rather than the employees – carve off the investment cream of fund surpluses. *The Australian Financial Review*, in announcing ASIC's consultation paper, said:

> "… the development follows reports about the CFMEU's $1.3 billion Incolink fund dispersing tens of millions of dollars of surplus monies to its union and employer group sponsors – the same sponsors who negotiate the rates companies contribute to the funds through enterprise agreements.
>
> "The Fair Work Commission is investigating claims that Master Builders Victoria is entirely reliant on grants from Incolink, creating potential conflicts of interest in

> bargaining with the union. Some MBV board directors have also questioned Incolink's use of workers' forfeited monies."[1]

There should be accountability for directors of these funds to act in the interests of funds as per the Corporations Act (s181) and not other interests. It is only by being subject to orthodox oversight that obligations on directors to act in the interests of the funds can be regulated in a proper manner.

Further, there are questions that should be asked about the skills, qualifications and capacities of board members of employee redundancy funds and this requires greater, not less, scrutiny pursuant to the Corporations Act rather than perpetuation of an exemption.

Among other events, three Royal Commissions* have exposed the dubious financial practices of certain redundancy funds (including lack of accountability and the diversion of surpluses at the whim of fund administrators). Ensuring they are subject to the Corporation Act should afford greater transparency for the members of the funds and the public at large that the funds are being used legitimately and for proper purposes.

We agree that "employee redundancy funds" should be renamed to "employee entitlement schemes" and that they should include long service leave entitlements. The number of funds including long service leave, income protection, etc. should be subject to oversight as any other Australian company. It is extraordinary that these multi-billion-dollar funds are subject to less oversight and scrutiny than a comparatively tiny mum and dad" company.

By extension, the case for regulation is overwhelming.

Conclusion

AREEA therefore supports Consultation Paper 384's **Option 1: *Allow the relief to expire and require full compliance***.

Operating in full compliance with the Corporations Act, fund operators would be required to hold an AFS licence and register the fund as a managed investment scheme.

Having been voluntarily incorporated under Australia's company laws for more than a century, AREEA and its members benefit from the discipline associated with higher standards required under the Corporations Act.

Based on this experience, all trade union and employer associations should be subject to the same stringent regulatory, policing and penalty processes. In particular, the regulation of trade unions is more important than ever – evidenced by various, well-publicised instances of criminal conduct.

Yours sincerely,

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[1]ASIC to police cash-swollen union redundancy funds - David Marin-Guzman, The Australian Financial Review, 24-06-25
*Royal Commission into Productivity in the Building industry in NSW, Royal Commission into the Building and Construction Industry, Royal Commission into Trade Union Governance and Corruption.