



SUBMISSION

Consultation Paper 384: Employee redundancy funds

July 2025

Employee Redundancy Funds - Consultation Feedback
Regulatory Reform and Implementation
Australian Securities and Investments Commission
GPO Box 9827
MELBOURNE VIC 3001
By email: rri.consultation@asic.gov.au

To the Australian Securities and Investments Commission,

Submission - Consultation Paper 384: Employee redundancy funds

Incolink embraces the Australian Securities and Investments Commission's (**ASIC**) initiative to improve the regulation of our sector and welcomes its consultation and approach.

We are proud that we have long advocated for appropriate regulation and have consistently supported this advocacy with our actions.

In 2024, we provided a public submission which welcomed ASIC's extension of relief from regulation as a Managed Investment Scheme while the Government consulted on establishing a bespoke regulatory structure that reflected the unique needs and circumstances of our growing industry.

Recently, I was pleased to inform ASIC on 6 June 2025 that the Incolink Board resolved to extend our governance leadership and adopt a model of self-regulation which harmonises with many of the requirements of a Managed Investment Scheme – including a Board-mandated capital adequacy target, enhanced transparency and internal controls.

Incolink is well positioned to embrace **any** of the regulatory options proposed by ASIC because we have established governance structures, dispute resolution mechanisms and external auditing. Incolink has responsible officers who would meet the requirements of holding an Australian Financial Services License (AFSL) and can obtain membership of the Australian Financial Complaints Authority (AFCA). It is our intention to issue a membership information statement, akin to a Product Disclosure Statement (PDS) to members, and to meet other requirements of a Managed Investment Scheme in the short to medium term.

However, we acknowledge that as the largest worker entitlement fund in the country, with over \$1.5 billion in funds under management, our size and our national scale have given us the capabilities – and likely unique position amongst peers – to meet compliance costs and regulatory requirements. Some funds may not be able to make the step change required to meet such standards, thereby placing their survival at risk.

We believe we have the best product in market, as the only fund to offer dividends to workers and comprehensive member services, underpinned by robust governance.

Incolink further welcomes ASIC's recognition of the unique role and range of additional activities undertaken by employee redundancy funds. At Incolink, we have recently doubled our investment in member wellbeing and support services including free counselling, suicide prevention, onsite health checks and skin cancer checks, vaccination programs, as well as expanding services to lung function tests, and hearing checks. We have invested in our Women in Construction program to provide women with sustainable careers, create cultural change and make construction sites safer. We are also the largest non-government funder of industry skills and training in the country.

These services should be accommodated in any future regulatory system, otherwise it would fall to government to fund such vital services in a fiscally constrained environment.

Incolink believes that the cost to government of service provision if we are denied the ability to continue to provide services in a regulated environment must be considered as part of this consultation. **The transference of direct training, health, social care sectors and other costs in the order of hundreds of millions of dollars would place further strain on the resources of government. For example:**

- **Incolink invested \$22.9 million in 2023-24 in industry training, taking the amount invested to \$270 million over the last decade**
- **569,655 training sessions were supported by Incolink and 19,800 workers received Toolbox training (including SunSmart and mental health training) on site**
- **With heart disease and stroke making up 15% of all deaths in Australia annually, the health check program operated at approximately 150 sites, enabling 3,884 workers to undergo checks without needing to leave work.**

We have long advocated for an expanded role for workers' entitlement funds, to relieve the burden on government, reduce uncertainty in precarious industries and provide a safety net for industries, primarily through safeguarding entitlements, but through training, counselling, occupational health and safety and onsite health responses. The importance of funds such as ours was underlined by Incolink's critical role in the response to COVID-19, funding worksite safety, delivering tens of thousands of onsite vaccinations and tests, and providing certainty to help keep the construction industry open.

We have provided our technical response to items in Consultation Paper 384 at [Attachment A](#).

We ask that we be included in ASIC's proposal for further targeted consultation with stakeholders to be undertaken in August and September 2025.

We look forward to continuing to work in partnership with ASIC and the Federal Government to ensure that the proposed regulation of our sector becomes a reality.

Please do not hesitate to contact me if there is anything I can do to further support this initiative.

Kind regards,



Incolink

Attachment A

Incolink makes this submission in response to the Australian Securities and Investments Commission's (**ASIC**) Consultation Paper 384 - 'Employee redundancy funds' (**Consultation**).

Incolink welcomes ASIC's push towards professionalising the industry and proposing to introduce new compliance measures, such as holding an Australian Financial Services Licence (**AFSL**). Incolink holds itself to high governance and compliance standards, aligning with some of the proposed changes. Incolink understands that ASIC is re-examining its existing transitional relief provisions predominantly due to the growth in the sector's funds under management but also having regard to prior consultation feedback and the evolving range of activities undertaken by funds. We believe regulation should align with the purpose of Approved Worker Entitlement Funds (**AWEF**).

Construction is an industry beset by company insolvencies, financial insecurity, long hours and intense competition. This is why we came into existence. Incolink keeps the industry working and supports workers when they are out of work. The success of construction workers and businesses in the sector are central to our mission.

We keep workers in the industry, support them financially when they're out of work, and provide skills training which ensures our industry has access to one of the most highly skilled workforces in Australia. Our employer members get peerless support to deliver safe workplaces.

Our values and our determination to provide members with the best product and services has delivered strong support from our members - with over 81% of members having a very positive or positive view on Incolink in recent independent market research commissioned by us.

While Incolink could readily comply with the regulatory requirements applicable to managed investment schemes (MIS), Incolink is concerned such an approach risks unintended consequences and may introduce unnecessary barriers that smaller funds would be unable to overcome. The nature of employee redundancy funds and their members differ greatly to regular MIS. Cost and resource burdens to transition towards this level of regulation and ongoing compliance will ultimately be borne by members, may reduce competition, and do not align with the purpose of these funds.

1. About Incolink

Incolink is Australia's largest provider of severance benefits and income protection. Incolink provides security of redundancy payments, portable sick leave and income protection insurance, and funds wellbeing programs to assist employee members through investment earnings.

Incolink has \$1.5 billion in funds under management and over 55,000 actively contributing members (workers and employers).

2. ASIC relief

The *ASIC Corporations (Employee redundancy funds relief) Instrument 2015/1150* (the **Instrument**), as most recently extended by Instrument 2024/618, provides employee redundancy schemes with relief from holding an AFSL and having to comply with sections 911A(1), 601ED, 992A and Part 7.9 of the Corporations Act 2001 (Cth) (**Corporations Act**).

This relief is due to expire on 1 April 2026.

3. Feedback on definition of 'Employee Redundancy Funds'

With insecure work becoming a permanent feature of the Australian economy across almost every industry, Incolink has previously advocated for an expansion of the portable entitlements model.

Expanding the definition to 'employee entitlement scheme' would enable flexibility to expand portable entitlements across other industries faced with significant job insecurity in the future. It also appropriately recognises the expanded range of activities engaged in by funds and new activities being contemplated within this sector, including those undertaken by Incolink and referenced above.

4. Proposal

Incolink's general position on each option provided in the consultation paper is listed below:

Option	Incolink's position
Option 1 Allow the relief to expire and require full compliance	Incolink is in a position to comply with this option but believes it would result in compliance costs and implementation challenges which would likely impact the survival of smaller employee redundancy funds. We elaborate further below.
Option 2(a) Limited relief from provisions that result in practical compliance issues	Incolink is in a position to comply with this option but considers that aspects of Option 2(a), particularly regulation of interests in employee redundancy funds as interests in managed investment schemes, may be impractical or unachievable for smaller funds, and some requirements should be excluded or modified. We elaborate further below.
Option 2(b) Relief from MIS and those provisions that result in practical compliance issues	This is Incolink's preferred option of regulation for the sector at large. Incolink is of the view that regulation of operators of employee redundancy funds, and particularly to MIS, would be inappropriate and not practicable, given the nature of the funds. As such, certain "fit for purpose" bespoke modifications would be required.
Option 3 Remake the existing relief with additional conditions	Incolink does not support this option. This current consultation occurs in the context of significant growth in funds under management and the broadening of activities that may be undertaken by funds. Incolink supports the regulation and professionalisation of our sector and believes that will not be achieved to the standard required with this option.

Incolink considers Option 2(b) could enable fit for purpose, tailored regulation, suitable for the nature and scale of employee redundancy funds. This would offer transparency, stronger fund governance, security of members' funds, and efficient prioritisation of members' interests while not requiring application of resources in areas which will provide limited or no further consumer benefits.

5. Specifics

As outlined in this submission, Incolink supports in-principle the intent of ASIC's proposals and has detailed where they may be impractical or represent an impediment to continued operation of other funds, where they are not resourced at a level to be able to comply.

We consider Option 2(b) further in this section and explore those matters which may be accommodated under the existing regulatory system, and those aspects which are unsuitable, and accordingly which ought to be subject to relief. To assist the consultation, we have indicated our position on each of the managed investment obligations indicated at table 2 of consultation paper 384 pp. 28-31.

Obligation	Incolink position
Managed investment provisions	Support in principle, with bespoke regulatory requirements as outlined herein.
Managed investment provisions: Statutory duties – Responsible entity	Support in principle as per above.
Managed investment provisions: Statutory duties – Officers of the responsible entity	Support in principle as per above, with accommodation for experience in membership services and industrial relations environments.
Managed investment provisions: Statutory duties – Employees of the responsible entity	Support in principle.
Managed investment provisions: Scheme property held on trust	Support in principle.
Managed investment provisions: Scheme constitution	Support in principle, noting that Incolink complies with these elements already.
Managed investment provisions: Fees and indemnities	Support in principle as per above, noting that Incolink has moved to a model of self-regulation where administrative expenses and member dividends will be the primary outputs of the scheme.
Managed investment provisions: Compliance plan	Support in principle as per above, noting that Incolink complies with many of these elements already.
Managed investment provisions: External directors or compliance committee	Support in principle, noting that Incolink is advanced in implementing these measures, or already has them in place.

5.1. Requirement to hold an Australian Financial Services Licence

Chapter 7 of the Corporations Act establishes the regulatory framework for the AFSL regime. It sets out the obligations of financial services providers, including requirements to act efficiently, honestly, and fairly, maintain adequate financial and human resources, manage conflicts of interest, and ensure compliance with financial services laws.

These provisions are designed to promote consumer protection, market integrity, and confidence in the financial system.

Incolink supports a proposal that employee redundancy funds be required to hold an AFSL. Incolink recognises that having regard to the scale of their fund (and others) and their primary activity in funding employee redundancy entitlements (and some other employee entitlements), it is appropriate to be subject to a licensing regime that ensures robust governance, transparency, and accountability, aligned with broader financial services regulation, but which recognises the essential differences between an employee redundancy fund and MIS.

5.2 Specific AFSL features which ensure governance, transparency, and accountability

In formulating a fit for purpose, bespoke regulatory framework for employee redundancy funds, Incolink suggests the following:

- **Financial resources, solvency and investment capability.**
 - Incolink submits that employee redundancy funds aim to preserve and capital protect entitlements for future member use, and also serve to transfer financial obligations related to redundancy (and some other employee entitlements) from the employer's balance sheet, into a separate fund to be available to benefit members in the event of their redundancy, (or other qualification for the benefit). This system separates these liabilities from the employer and thereby manages the risk of a worker not receiving a redundancy payment (or other payment) in the event of an employer's insolvency. Alternatively, and quite differently, managed investment schemes aim to generate income (an investment purpose) for their investors who choose to invest in such fund products.
 - Incolink submits that employee redundancy funds are fundamentally different where the members of these funds are not contributing money to acquire interests in financial products. Rather, employers are required under statutory awards or enterprise agreements to make contributions on behalf of employees. In turn, employees have the ability to call on their redundancy or other benefits from the fund in the event of a redundancy or other qualification for benefit.
 - Accordingly, Incolink submits that financial aspects, such as the investment approach for fund assets, liquidity and solvency measures, and the operation and application of reserves, ought to be managed having appropriate regard to the specialised purpose of employee redundancy funds, rather than applying other measures that may not be suitable, or relevant to a managed investment fund of this type.
- **Annual external audit.**
 - Auditing employee redundancy funds can enhance transparency, which Incolink supports. Incolink currently undergoes external audits and publishes audited financial statements.

- **Organisational competency by implementing Responsible Manager requirements.**
 - Incolink submits that internal organisational competency requirements are appropriate. Employee redundancy funds should be managed by suitably qualified and experienced personnel. Section 912A(1)(e) of the Corporations Act requires AFS licensees to maintain competence in providing financial services, which ASIC Regulatory Guide 105 interprets as having at least two responsible managers to oversee compliance. ASIC evaluates organisational competence based on the knowledge and skills of financial services managers. Where ASIC requires a list of experience in roles providing related financial services, this may present a challenge for managers of employee redundancy funds, which have not previously been considered financial products. Accordingly, Incolink suggests that the relevant experience of responsible managers of employee redundancy funds be appropriately recognised, including as it relates to industrial relations and the member service offering, to support compliance with the organisational competency requirement within the transition period proposed.
- **Other organisational issues.**
 - Compliance Plan: While the requirement to have a compliance plan under Part 5C.4 and requirement to have a compliance committee under Part 5C.5 could be impractical for smaller funds which may not have the staffing and resources to create a compliance committee, Incolink intends to establish one.
 - External dispute resolution: Section 912A(2) of the Corporations Act requires AFS licensees who provide services to retail clients to have an internal dispute resolution system (DRS) and an external DRS, which is implemented by way of AFCA membership. Incolink intends to enhance its internal complaints process and establish a member services charter which would address this issue.

5.3. Certain AFS and Chapter 5C matters which are not (or may not) be relevant for employee redundancy funds and accordingly which should be the subject of relief

- **Disclosure documents, such as PDSs and TMDs:** Although AFSL holders are required to satisfy disclosure requirements by providing regulated documents such as Product Disclosure Statements, and Target Market Determinations, (under Part 7.8A and 7.9 of the Corporations Act) these would not serve a purpose for members of employee redundancy funds. As ASIC noted in paragraph 35 of the Consultation Paper, where members of these funds do not make an investment decision or make the contribution themselves, Incolink submits that a PDS and associated documentation is not relevant to them. Further, where many industrial agreements specify the fund to which employee redundancy fund contributions are required to be made, members cannot be said to be making an investment decision to acquire an interest in a financial product. The requirements under Part 7.8A and 7.9 of the Corporations Act add no further value to members and are incompatible with the proper operation of employee redundancy funds. Alternatively, a version of a product disclosure statement that focuses on the nature of the service standards and obligations to members, rather than those applied for a financial product would be more relevant in this case.
- **Responsible entity duties** in section 601FC of the Corporations Act: Incolink submits that where employee redundancy funds are classified as an approved worker entitlement fund (**AWEF**) under the *Fringe Benefits Assessment Act 1986* (Cth) (**FBT Act**), AWEFs already operate with a member-focused approach. These regulations properly reflect the nature of employee redundancy funds, with a focus on promoting member benefits. Accordingly, the responsible entity duties set out in section 601FC of the Corporations Act will provide minimal additional protections for members of employee redundancy funds, may confuse the regulatory position where the obligations under the Corporations Act and the FBT Act are aligned, but not identical, and it is submitted should not be imposed on employee redundancy funds. Further, if ASIC was to require employee redundancy funds to hold an AFSL, the duties that come with holding a licence will also coincide with those required under section 601FC of the Corporations Act.

- **Breach reporting:** Sections 912A and 912B of the Corporations Act outline obligations for licensees, which section 912D then requires licensees to report any breaches of these obligations to ASIC as 'reportable situations.' Given the limited nature of the offer of employee redundancy funds, section 912D's reporting provisions should be tailored to better reflect the purpose of AWEFs. In principle, this could ensure a more practical and meaningful operation of potential breach reporting for employee redundancy funds, as AWEFs are not, in essence a discretionary investment vehicle, but are mandated under industrial agreements.
- **Withdrawal and liquidity** requirements in Part 5C.6 of the Corporations Act do not support the key functions of employee redundancy funds. For employee redundancy funds, applications by employees to withdraw from the fund occur in the circumstances proscribed in the fund rules - that is in the event of redundancy, or other qualifying circumstances, which are also prescribed through the relevant sections of the Taxation Act as they relate to employee termination. It is not practicable, or appropriate, to require an employee redundancy fund to offer withdrawals to all members as an act of fairness. The purpose of the fund is to ensure access to capital amounts in the event of employment severance, and not in other circumstances.

Incolink notes that employee redundancy fund members are onboarded through being called up under a relevant industrial instrument. While Incolink validates identification before processing genuine redundancy or ETP payments, employee redundancy funds cannot control who becomes an employee member (customer). Members cannot independently contribute funds to their account, unlike in a MIS, and nor can we prevent payments of contingent entitlements to customers upon satisfaction of the triggering event (redundancy/termination). Because of the nature of employee redundancy funds, a significant number of payments would reach the reporting threshold of \$10,000, creating practical compliance challenges for funds, and this creates a difference with Know Your Customer (KYC) procedures as per a regulated financial services company.

- **Members meetings:** Section 252B of the Corporations Act would impose a burden on responsible entities of employee redundancy funds by needing to hold a members' meeting to vote on a special or extraordinary resolution. Akin to Superannuation Funds, it would be unnecessarily impracticable for employee redundancy funds (including for Incolink with over 55,000 members) to be required to have workers vote on the same matters that investors in an MIS are entitled to vote on. This is further impracticable on smaller funds who may not have the resources to facilitate such meetings and are burdensome on members to attend and vote on matters which may not even impact their entitlements and for which they do not hold voting rights.

6. Concluding remarks

Incolink welcomes ASIC's review of existing employee redundancy fund relief and submits that employee redundancy schemes should be regulated to a degree, including holding an AFSL, but due to their nature should not be classified as a MIS.

Incolink does not just make this submission in its own interests, but in the interests of the industry as a whole. Options 1 and 2(a) could negatively affect many funds in the sector, as we believe the regulatory detriment of granting relief is minimal. Where the purpose of these funds is to provide financial security to workers in an industry that faces uncertainty, the imposition of heavy regulation could see smaller funds collapse due to the cost and resourcing associated with compliance.

Incolink believes that Option 2(b) is the best regulation option. Incolink considers that a tailored regulatory solution could be implemented under Option 2(b) that recognises the purpose, and operation of the employee redundancy fund, and the critical nature of the services they provide to workers and employers in precarious industries, as opposed to a financial product which is purchased on a discretionary basis.



1 Pelham Street
Carlton, VIC, 3053

Phone: 1800 337 789
Email: support@incolink.org.au

www.incolink.org.au