



BIRST Response to ASIC Consultation Paper 384 Employee redundancy funds



Australian Securities and Investments Commission
Level 7, 120 Collins Street, Melbourne, 3000

About BIRST

The Building Industry Redundancy Scheme Trust (BIRST) was established in 1989 by participants in the South Australian construction industry to provide construction industry employees with secure benefits at the time of redundancy, retirement, death or permanent disablement.

The Trust was established through the Building Industry Redundancy Scheme Agreement and operates under a Deed of Trust.

All contributions are held in trust on behalf of members and conservatively invested according to the Deed of Trust which currently provides that security of member's entitlements is the primary objective.

BIRST was created as a response to several high-profile company liquidations in the late 1980's that left employees out of work and without redundancy payments.

In many cases, principal contractors were forced to fund redundancy payments on behalf of sub-contractors that had collapsed.

The income from BIRST investments is used to pay the cost of administering the fund and any surplus is then used for the benefit of the construction industry and its participants via, e.g. the provision of ambulance, funeral and journey cover for members.



South Australian
Building Industry Redundancy Scheme Trust

Telephone (08) 8373 0122
Facsimile (08) 8373 1929
Email enquiries@birst.com.au

PO Box 321
Unley BC SA 5061
ABN 85 288 618 019

Mates in Construction

In 2012 BIRST provided the seed funding to introduce the Mates in Construction suicide prevention program to South Australia. Financial support continues to this day via annual donations and in-kind support through shared staff and resources.

BIRST appointed a tri-partite Board and employed appropriately qualified staff to roll out this life-saving initiative which has been recognised by the World Health Organisation as an example of best practice in suicide prevention programs.

Mates in Construction receives significant, ongoing financial support from both the State and Commonwealth governments.

BIRST Principles

BIRST is very much a South Australian focussed Fund and has no pretensions or ambitions to become a national player.

BIRST's approach to ASIC's Consultation Paper 384 is based on the following:

1. There is a positive case for a tailored level of regulatory reform for the redundancy funds sector.
2. ASIC should avoid any steps which would undermine competition in the sector i.e. any regulatory changes should *enhance* transparency *and* competition.
3. Smaller, state-based funds which have generated no negative public, regulator or Member concerns should not have their operations and cost structures burdened or destroyed by unnecessary and costly regulatory requirements.
4. The ACTU's core Superannuation principles – requirements for *Member Choice* and *Profits to Members* are equally applicable to redundancy funds and should be supported and adopted.



5. No regulatory change should undermine or remove the capacity of redundancy funds to continue support for funding of registered charities such as Mates in Construction which provide vital and related services for the welfare of construction industry employees and Members.
6. ASIC's regulatory reform proposals should distinguish between large nationally focussed Funds (e.g. those with more than \$100 million in FUM) and smaller state-based Funds (e.g. those with less than \$100 million in FUM) and consider arguments for a two-tiered regulatory structure.

Background

ASIC has proposed a number of reform options to the regulation of employer redundancy funds and is, among other things, seeking to understand:

- the likely compliance costs;
- the likely effect on competition; and
- other impacts, costs and benefits.

We thank ASIC for granting an extension of time to submit our responses.

As ASIC notes:

This assessment occurs in the context of significant growth in funds under management, the broadening of activities that may be undertaken by funds and stakeholder feedback that our current relief should not be continued.

Two-Tiered Evolution

There is a risk in analysing the recent evolution of the employee redundancy funds sector by taking it as a whole, as opposed to recognising two distinct and different pathways of development.

On the one hand, there are a number of relatively small, state-based employer redundancy funds whose funds under management and activities undertaken have grown incrementally.



South Australian
Building Industry Redundancy Scheme Trust

Telephone (08) 8373 0122
Facsimile (08) 8373 1929
Email enquiries@birst.com.au

PO Box 321
Unley BC SA 5061
ABN 85 288 618 019

These funds are generally purely locally (state) focussed, have generated little or no public controversy and have served their members and communities very well over the last 40 years or so.

Their service offerings (apart from their core business of managing the redundancy fund and paying the benefits as/when required) have generally been practical, relevant and industry focussed.

We note that ASIC is (at least partly) motivated to undertake this review by the fact that some funds are now providing activities such as the funding of long-service leave, sick leave, and training.

Again, it is noted that a number of the smaller state-based funds are not currently offering or proposing to undertake such activities.

Likely Compliance Costs

We understand that a number of employee redundancy Fund submissions to ASIC may include detailed cost estimates of both the introduction and ongoing impacts of the various reform proposals outlined in ASIC's Discussion paper.

We do not propose to replicate or duplicate that work here but would reinforce any general conclusions that may follow from an analysis of these submissions. A sledgehammer should not be used to crack a nut – particularly a good nut!

Unnecessary and prohibitively expensive regulation should be avoided where the results would see a diminution in competition, the destruction of socially useful organisations and services and, the loss of funding for vital charitable services such as Mates in Construction.

It is for these reasons that BIRST supports ASIC analysing the net benefits of a 'two-tier' model – some version of Option 2 for the large nationally focussed redundancy Funds (with FUM of more than \$100 million) and some version of Option 3 for the smaller state-based Funds (with FUM of less than \$100 million).



Likely effect on competition

As outlined above, the costs of complying with a regulatory framework, other than Option 3, is likely to have the effect of undermining the current financial viability of the smaller state-based Funds. This will in turn seriously weaken or destroy competition in the sector.

Many overstate the theoretical and actual benefits of economies of scale (and usually always ignore diseconomies of scale).

Human responses, quality service and long held reputations for trust and integrity are powerful competitive tools against larger, deep pocketed competitors.

However, the competitive advantages of smaller locally recognised, and highly valued, Funds may be destroyed by the establishment and ongoing costs of a regulatory framework that is designed for the regulation of *for-profit* providers of financial services.

Some would view it with concern if the regulator, in response to concerns about the perceived operations or behaviours of some of the redundancy funds, implemented a regime whose costs meant that the smaller funds could no longer operate but allowed others, with the financial capacity to absorb the new regulatory costs, to flourish.

Other impacts, costs and benefits

ASIC's Consultation Paper notes that:

We have previously received feedback from industry that allowing the relief to expire and requiring strict compliance with the AFS licensing, managed investment and associated provisions in the Corporations Act would cause hardship and risk disadvantage to the members of funds and their operators. Relief with tailored conditions may impose more appropriate requirements that can be complied with, while reducing this impact. The conditions placed on relief could operate to provide an uplift in transparency, accountability and good governance by fund operators.

BIRST submits that, apart from events and activities in the larger Fund national market, nothing fundamental has changed in the cost structure, operations or behaviour of the smaller state-based Funds.



**South Australian
Building Industry Redundancy Scheme Trust**

Telephone (08) 8373 0122
Facsimile (08) 8373 1929
Email enquiries@birst.com.au

PO Box 321
Unley BC SA 5061
ABN 85 288 618 019

We fully agree that:

- allowing the relief to expire would cause hardship and risk disadvantage to the members of the smaller state-based Funds and their operators;
- continuing relief with tailored conditions would impose more appropriate requirements that can be complied with, while reducing this impact for the smaller Funds; and
- the conditions placed on relief could operate to provide an uplift in transparency, accountability and good governance by fund operators.

For its part BIRST believes it can continue to operate within the environment that Option 3 would create, for the benefit of the construction industry and BIRST members.

As noted above, BIRST believes that a review and modification to the regulatory regime, if appropriately calibrated and tailored for the ‘two tiered’ developments, is justified and supported in principle.

The adoption of Option 3 for the smaller Funds is reasonable in all the circumstances.

BIRST submits this response in good faith and welcomes the opportunity to discuss these ideas further with ASIC in due course.