Protect Submission to ASIC Consultation Paper 384

Regulation of Employee Redundancy Funds under the Corporations Act

Date: 5 August 2025

Introduction

Protect welcomes the opportunity to respond to ASIC Consultation Paper 384: *Employee Redundancy Funds*. We support the introduction of fit-for-purpose regulation that recognises the unique structure and purpose of worker entitlement funds, while enhancing financial security and governance.

Protect supports regulation via Option 2(b), with support for the additional requirement to develop a Compliance Plan and establish a Compliance Committee. We will elaborate on our reasoning in answering the questions asked in CP384.

For decades, the existing legal framework has safeguarded worker entitlements without evidence of systemic failure. However, the scale and complexity of redundancy funds today justifies a modernised regulatory approach. We support removing the current relief and replacing it with a model aligned with broader corporate standards — in particular, **Option 2(b)** which is based on the Australian Financial Services Licence (AFSL) framework.

Differences between redundancy funds and Managed Investment Schemes.

It is important to distinguish the purpose, structure and operations of redundancy funds from Managed Investment Schemes (MIS) in order to justify any departure from the full compliance model proposed in Option 1.

	Redundancy funds	**Managed Investment Schemes**
Purpose	Preserve and pay specific worker entitlements Low risk capital preservation	Maximise financial returns for investors Risk-return profit generation
Contributing party	Employers of the worker	Individual investors
Contribution	Monthly contribution of an agreed fixed amount.	Usually upfront with ability for ad hoc increments depending on fund rules

Obligation to contribute	Established by industrial agreement	Individual's discretion to invest
Withdrawal	Upon employment termination or transfer between funds	On demand, subject to fund rules
Regulation	ATO – Fringe Benefits Tax Assessment Act 1986 (Cth), s58PB. Trust Law Corporations Act 2001 (Cth) – applicable to Trustee companies	ASIC – Corporations Act 2001 (Cth) Chapters 5C & 7 Trust Law Corporations Act – applicable to Trustee companies

We do not support the continuation of the existing exemption, nor do we reject any of ASIC's proposed options only on the basis they are more difficult, burdensome or costly. Our submission instead advocates for regulations that align with the purpose and structure of redundancy funds.

In order to provide full context for ASIC's considerations, we have outlined some operational matters below.

What we do	**What we don't do**
Pay **redundancy & severance payments** to workers based on contributions prescribed by their industrial agreements	• Protect does not negotiate severance entitlements, contribution rates or choice of fund. Protect is not involved in industrial agreement negotiations
Collect **severance contributions** from employers, as prescribed by industrial agreements	• Protect does not accept ad hoc or additional contributions not supported by an industrial agreement
Invest pooled contributions generate income to pay administration costs and, when possible, distributions to sponsoring industries after satisfying the primary purpose of preserving workers benefits	• Invest to maximise profit
Support sponsoring industries, via **distributions of surplus income and capital**, so those industries can provide training and welfare services directly to workers within their industries	• Invest pooled contributions for the purposes of delivering an investment return to workers

Separate to the redundancy fund and via a service company, other activities are performed as follows:

What we do	What we don't do
Administers **income protection insurance** by collecting insurance premium payments from employers, as prescribed by industrial agreements, remitting those payments to the insurer and managing the member database. *Service performed by a separate service company not, the redundancy fund*	• Protect does not negotiate income protection insurance rates or choice of insurance provider. • Protect does not process insurance claims • Protect does not make insurance payments • Protect is not the insurance policy holder nor does it establish or negotiate insurance coverage.
Provide, via **third parties**, limited worker welfare benefits e.g. **Counselling** services *Service performed by a separate service company not funded by the redundancy fund*	• Provide training services although we do contribute to training provided by related industries via distributions

We are administrators and custodians of entitlements — not investment managers seeking profit.

Protect appreciates the opportunity to contribute to this consultation and looks forward to engaging constructively with ASIC on a regulatory framework that protects workers redundancy benefits, supports industry, and reflects the real-world function of redundancy funds. We also request we are involved in the "further targeted consultation" referred to in paragraph 14 of CP384.

On page 4 of the Consultation Paper, ASIC wrote "Where possible, we are seeking both quantitative and qualitative information. We are also keen to hear from you on any other issues you consider important." Issues we have not otherwise commented on in later sections are as follows:

- Protect has 25,350 members with a severance account balance; member balances total $450.3M as at 30 June 2025.
- For the year ended 30 June 2025, Protect paid severance claims totalling $126.4M to 10,040 members. Since our inception in 2000, $862.4M has been paid to 124,500 members.
- According to the ABS, as at December 2023 there were 3,656 Registered MISs in Australia, managing $4.75 trillion in investor funds. $2 billion held in trust in approximately 20 employee entitlement schemes represents a fraction of total funds under MIS management. Any legislative and compliance requirements should recognise this.

Other Important Issues

How workers become Members

The process of workers joining a Redundancy Fund is important in distinguishing the Funds from other MISs (and Long Service Leave Funds) – which in turn justify consideration of a regulatory framework which is not identical to Managed Investment Schemes.

- Unions and employers negotiate an Enterprise Bargaining Agreement (EBA) which sets out redundancy and severance entitlements and nominates a Fund for the employer to contribute to for this purpose.
- Protect is not a party to the EBA nor is it involved in the negotiation.
    - The parties to the agreement may invite Protect representatives to the workplace to inform them about the Scheme or provide explanatory materials such as brochures.
- Employers are responsible for registering their workers with Protect.
- Individual employees cannot register themselves.
- The EBA establishes the employer's obligation to contribute an agreed amount.
- Failure to contribute results in a breach of the industrial instrument, the EBA. The situation can therefore only be remedied by the parties to that agreement (although Protect has rights under its trust deeds to pursue employers that are members of the Fund for unpaid contributions).
- Employer contributions are held in trust for the workers and invested. Investment proceeds are applied to cover administrative costs, maintain an investment buffer to protect against investment market downturns and then, if there is a surplus, it may be distributed to the Sponsors of the Scheme.
- Enterprise agreements establish employer liability for redundancy and severance payments. However, this liability is reduced by contributions made to a redundancy fund.

Other matters

- Under section 58PB of the *Fringe Benefits Tax Assessment Act 1986* ("FBT Act"), Protect has been endorsed by the Australian Taxation Office ("ATO") as an Approved Worker Entitlement Fund ("AWEF"). To maintain its AWEF status, Protect must work within specified criteria covering: arms-length management, investment restrictions, permissible use of contributions and fund income and keeping individual worker accounts. Preservation of AWEF status is critical for redundancy funds as employers and their representatives would be reluctant to agree to make contributions to a redundancy fund that was not an AWEF as they would be subject to fringe benefits tax on those contributions.
- Protect is established under a Trust Structure and therefore compliant with relevant trust law obligations in Australia.
- Clarity is needed on the meaning of "Audited Accounts" – whether this is intended to be General Purpose Financial Statements or Special Purpose Financial Statements. Is the term dependent on the Option (1,2a,2b or 3)?

Section B1: Definition of 'Employee Redundancy Funds'

B1Q1 – Do you agree with our proposed new term and definition?

Protect supports the proposed shift in terminology from "employee redundancy funds" to **"employee entitlement schemes"**, as it more accurately reflects the broader purpose these funds now serve.

While the phrase "other entitlements that are **incidental** to employment" provides some scope for existing schemes to broaden their services, it remains open to interpretation and would arguably include superannuation as being "incidental" to employment. We suggest that the definition is narrowed by use of examples. "…incidental to employment, including but not limited to employee training, employee welfare services and occupational health and safety. An equivalent statement of exclusions, such as superannuation would be helpful.

The reference in B1 (a) to "**redundancy**" is narrow. It could be expanded to cover "…redundancy, severance or other termination events", given that, depending on the Scheme, a worker may be entitled to payment upon resignation, retirement, promotion off-the-tools or death.

The definition refers to an employer being required "by an award or agreement to make contributions." In the case of Long Service Leave (LSL) funds, the obligation for a contribution is created by State Legislation, not an award or agreement. Either the

definition needs amendment to read “awards or agreement or Statute” or reference to LSL should be removed.

B1Q2 – Are there other employee entitlements that should be included as primary objectives?

There needs to be scope to allow funds to evolve over time as industry demands. While the proposed definition includes the phrase “other entitlements that are incidental to employment”, as mentioned above this could lead to issues of interpretation and unintended consequences. More specific examples within the definition would help clarify.

In addition to redundancy/severance (and perhaps LSL), funds do or may in the future provide for other employee entitlements such as:

- Administration of insurance (collection of insurance premiums and managing a database of employees covered by a group insurance arrangement).
- Training
- Welfare services

B1Q3 – Alternative Definition / Should the definition be tied to the FBT Act (s58PB)?

As in B1Q1:

- Employee Severance Scheme would be the preferred term, if LSL is *excluded* OR amend paragraph (a) to refer to “…redundancy, severance or other termination events” if LSL is *included* as paragraph (b).
- Concerns over interpretation of “other entitlements that are incidental to employment” could be handled by exclusion – see B1Q4.

We support referring to but not limiting the definition to **“approved worker entitlement fund” under section 58PB of the FBT Act**. AWEF requirements include various restrictions on the way funds can operate and use contributions.

We consider it important that any proposal for regulation by ASIC does not contradict the FBT framework and potentially cause cross-regulatory compliance issues. We provide some examples at item C1Q1.

However, it should be noted that employee entitlement funds can still exist that are not endorsed AWEFs. These funds, whose purpose is to pool contributions for the purposes of providing employee entitlements should also be captured regardless of their status under the FBT Act.

We are not in a position to comment on whether this would impact the inclusion of LSL Schemes.

B1Q4 – Should any arrangements be excluded or the scope of objectives limited?

Yes. Protect supports excluding funds from the definition of employee entitlement fund that:

- Are Superannuation Funds
- Operate primarily for investment return;
- Permit members to directly influence investment choices (akin to superannuation schemes); or
- Are controlled by commercial for-profit entities without worker/employer representation.

Such exclusions ensure the relief regime remains targeted at purpose-built funds focused on preserving worker entitlements—not financial speculation - thereby excluding from any tailored regulatory approach that might apply to employee entitlement funds any funds that do not have preservation of worker entitlements as their primary purpose..

B1Q5 – Would changing the definition affect the operation of your fund?

No, we do not believe it will affect the operation of the funds or any impact would be manageable provided the new definition does not contradict existing legislation or fiduciary responsibilities under the trust deed.

The term “redundancy is defined in section 119 of the Fair Work Act 2009, (Cth); “Genuine Redundancy” is defined in section 83.175 of the Income Tax Assessment Act 1997 (Cth). The former establishes entitlements and the latter determines the tax treatment if the redundancy is ‘genuine’. Funds rely on these definitions, so it is important that any definitions do not conflict with these.

If the new definition is overly narrow or misaligned with other legislation, it may require:

- Amending trust deeds;
- Modifying reporting systems;

Conclusion

Protect supports a redefinition that recognises the evolving scope of worker entitlement schemes while retaining regulatory clarity. We recommend that:

1. Definition does not exclusively refer to AWEF per the FBT Act so non- endorsed Funds will be captured and subject to the same legislation

2. Removal of specific reference to redundancy funds and long service leave funds to recognise that other forms of employee entitlement funds can or may, in the future, exist
3. Clarifying "incidental to employment" by listing inclusions (training, welfare, OHS) and exclusions (superannuation).
4. Expanding "redundancy" to include *"redundancy, severance or other termination events"* (e.g., resignation, retirement, death).
5. The new definition must not conflict with statutory definitions of "redundancy" under the Fair Work Act or "genuine redundancy" under the ITAA.
6. The relief continues to exclude commercial or speculative schemes; and
7. Adequate transition time and grandfathering provisions are built in to accommodate any operational changes.

Section C – Option 1: Allow the Relief to Expire

C1Q1: Please provide your feedback on this option, including reasons in support of your views.

Protect opposes Option 1. Requiring full compliance with the *Corporations Act 2001 (Cth)* (Corporations Act) would impose excessive, inappropriate obligations on employee entitlement schemes. These schemes, including Protect, are not designed to generate investment returns but to preserve capital for the payment of entitlements. Applying full managed investment and AFSL obligations would burden schemes with irrelevant requirements, increasing compliance costs without meaningful benefit to members.

We acknowledge that the MIS provisions of the Corporations Act have been in place and functional for a considerable time. However the MIS arrangements were established for a different purpose (regulating retail investments). We support redundancy fund regulation through a fit-for-purpose solution, which is best achieved via Option 2(b), rather than imposing a one size fits all approach.

We believe, to varying degrees, that Options 2a, 2b and 3 provide a more appropriate solution. Option 1 does not.

Three Critical Issues with Option 1 and 2(a)

A. Conflicting Requirements of the FBT Act and the MIS provisions of the Corporations Act.
B. The incompatibility of the withdrawal and liquidity provisions of the Corporations Act Part 5C.6 with the purpose and operation of employee entitlement funds
C. Voting Provisions

Three Further Critical Issues with Option 1

D. Incompatibility of the mandated content of Product Disclosure Statements
E. Hawking Provisions
F. Incompatibility of the Design and Distribution (DDO) provisions

A. Conflicting Requirements of the Fringe Benefits Tax Assessment Act and the MIS provisions of the Corporations Act.

Approved worker entitlement funds already operate under a regulatory regime outlined in section 58PB of the FBT Act. This framework provides redundancy funds with a 'ticket to play', imposing strict limitations on fund purposes and the use of contributions.

Section 58PB requires that contributions are to be held for the primary purpose of meeting worker entitlement liabilities or purposes thar are incidental to that primary purpose. The

strict limits on the application of income generated by AWEFs implies that redundancy funds are not designed to function as investment vehicles aimed at generating financial returns for employee members beyond securing their entitlements and defraying the cost of operating the fund.

In contrast, a MIS operating according to Chapter 5C, treats pooled contributions as investments made for the purpose of financial gain.

Both Option 1 (requiring full compliance with the Corporations Act) and Option 2(a) (requiring limited relief) would impose the MIS framework or parts thereof on redundancy funds. In practice, this risks regulatory conflict and may disrupt the core function of these funds — namely, the preservation and timely payment of worker entitlements.

Instead, a more proportionate regulatory approach would be to require redundancy fund operators to hold an AFSL, with tailored obligations under Chapter 7 of the Corporations Act that align with the purpose and risk profile of employee entitlement funds. This would ensure that governance expectations are met while preserving the legal and operational consistency with the FBT Act framework. This approach is ASIC's proposal 2(b).

B. Withdrawal and liquidity provisions of the Corporations Act Part 5C.6

Redundancy Fund compliance with Part 5C.6 of the Corporations Act would be required in Options 1 and 2(a). Redundancy funds do not allow members to "withdraw" at will like retail managed funds that are liquid. Instead, members may only claim on the event of a termination of their employment (including retirement or death). If redundancy funds continue to operate in this manner (payment on an event), while disallowing a withdrawal, they would arguably be in breach of the Part 5C.6. In other words, redundancy funds could not comply with both its trust deed and Part 5C.6 simultaneously without radical structural overhaul – and costs associated with Trust Deed re-drafting, development of policy and processes for allowing ad hoc withdrawals and associated costly amendments to an IT system. Changes of this scale would need a far longer transition period than the six months proposed.

Withdrawals as a result of anything other than a severance event would also jeopardise the AWEF status of the fund and hence the FBT Act exemption for contributions and may alter the tax implication of the withdrawal for our worker members.

Contrast this to an employee of a corporation operating outside redundancy funds. Such an employer should be making provision for employee redundancy. However, those employers are not entitled to access a payment (i.e. withdraw from the provision) on an ongoing basis.

Part 5C.6 of the Corporations Act also defines a 'liquid' fund as holding 80% of its assets as liquid assets (s601KA(4) & (5)). Protect, even with a conservative investment strategy designed to preserve capital, does not hold 80% in liquid assets and therefore would be defined as an illiquid fund. The withdrawal process therefore becomes more complicated and requires funds to arrange a "withdrawal round"; payment of worker entitlements outside of the withdrawal period could therefore breach Part 5C.6. Consequently, members would not

be paid their entitlements upon termination of employment – resulting in a disadvantage compared to employees working in industries without redundancy funds.

While Option 2(b) would require employee entitlement funds to obtain and maintain an AFSL, we note that this obligation does not trigger the application of Chapter 5C of the Corporations Act—specifically, the provisions of Part 5C.6 relating to withdrawals and liquidity requirements. These obligations are applicable only to entities that operate a registered Managed Investment Scheme (MIS). Since Option 2(b) expressly provides relief from MIS registration, the core conflicts with the Fringe Benefits Tax Assessment Act 1986 (FBTA)—particularly concerning capital preservation, withdrawal timing, and liquidity—do not arise. Option 2(b) therefore provides a practical and regulatory pathway that achieves ASIC's objectives of increased oversight while maintaining the structural integrity and purpose of Approved Worker Entitlement Funds under the FBT Act.

Protect also considers that other fundamental aspects of the managed investment scheme provisions in Chapter 5C, including the registration requirements in Part 5C.1, the provisions of Part 5C.2 including those regarding retirement or removal of the responsible entity of the scheme, and aspects of the winding up provisions in Part 5C.9, are incompatible with the fundamental nature and operations of employee entitlement funds

C. Voting Provisions

The voting provisions under Part 2G.4 of the *Corporations Act*, including Section 252B, are ill-suited to the operation of employee entitlement funds. These funds do not operate as investment vehicles in which individuals voluntarily acquire units or seek voting power proportional to financial stake. Rather, membership arises from industrial agreements mandating employer contributions, and the core purpose is the secure administration of worker entitlements—not collective decision-making by beneficiaries.

Imposing MIS-style voting frameworks could introduce unnecessary complexity and conflict with the trust-based, representative governance models that are appropriate to this sector. We recommend that employee entitlement funds be exempt from these provisions under any final regulatory model – which is the case for Option 2(b) and 3.

D. Product Disclosure Statements

Product Disclosure Statements (PDS) are designed to assist individual retail investors in assessing an investment's risks and potential returns. These disclosures are appropriate for financial products where consumers are making investment decisions and seeking market-based returns. Protect, by contrast, is not an investment vehicle.

Protect's purpose is to preserve and promptly pay worker entitlements—such as redundancy benefits—particularly in the event of employer insolvency or job loss. The Fund adopts a capital-preservation strategy with a conservative investment approach, fundamentally differing from managed investment schemes that aim to maximise returns for investors. Once members have joined the fund, they are not able to exercise a choice of

investment strategy and cannot withdraw funds until they experience an employment termination event.

Employee redundancy funds are structured to safeguard entitlements, not to offer financial products. This distinction underpins our support for the continued exemption from the PDS regime.

The following key characteristics of Protect underscore why PDS obligations are inappropriate:

- Workers do not select Protect as an investment option. They become beneficiaries through their employer's obligations under an enterprise agreement or award.
- The PDS regime is intended to support consumer comparison and informed financial product selection. That model does not apply to redundancy fund operations, which are focused on low risk capital security, not providing investment options within the fund.

As RG 168.39 notes:

> "The broad objectives of PDS disclosure are to help consumers compare and make informed choices about financial products."

In Protect's 2015 submission to ASIC in support of the existing exemption, we stated:

> "The regulatory provisions for registered managed investment schemes in Chapter 5C of the Corporations Act were clearly enacted to protect investors in the managed investments industry, and not to protect members in employee benefit funds that secure workers' entitlements by focussing on capital preservation."

E. Hawking Provisions

Relief from Hawking Provisions

The Hawking provisions are not applicable in this context. Table 4 of CP 384 makes clear that "a person must not offer a financial product to a retail client in the course of… unsolicited… contact." However, individuals do not join the Scheme; they are enrolled by their employer through an industrial agreement. As such, the concept of an individual retail client making a personal investment decision does not arise.

As outlined in our introduction, workers (Members) become part of the Fund as a result of an industrial negotiation to which the Fund is neither a party nor a participant. The employer subsequently registers the worker. In this framework, the Member is not acting as a retail client seeking a financial product.

Given that the individual cannot independently join the Scheme, applying the Hawking provisions would create an unnecessary compliance burden, as illustrated by the 49-page length of Regulatory Guide 38—detailing requirements for a situation that does not, in practice, occur.

We support the proposed exemptions from the Hawking and Product Disclosure Statement requirements under Options 2 and 3. These are practical and appropriate amendments for redundancy funds.

F. Design and Distribution Obligations

According to ASIC's regulatory guide, the design and distribution obligations in Part 7.8A of the Corporations Act are intended to help consumers obtain appropriate financial products by requiring issuers and distributors to have a consumer-centric approach to the design and distribution of products. As noted earlier in this submission, employee entitlement funds are not 'distributed' in the same way as investment products like MIS because workers become members of the fund by virtue of various industrial agreements. There is no 'retail product distribution conduct' for employee entitlement funds as there is for most MIS.

Furthermore, the 'design' of employee entitlement funds is largely determined by their inclusion in relevant industrial agreements (which might specify certain core aspects of the operation of the employee entitlement fund to which employers are obliged to contribute) and the prescribed requirements of the AWEF provisions in the FBT legislation. The extent to which operators of employee entitlement funds can make major changes to the fundamental 'design' of their funds is substantially limited (although most operators will seek to improve and enhance member experience).

We therefore consider that any sensible regulation of employee entitlement funds should exclude the Design and Distribution Obligations that apply to MIS and other financial products.

C1Q2: Is this your preferred option for the regulation of employee redundancy funds? If so, please explain why you prefer it over Option 2 and Option 3.

No, this is not our preferred option. We prefer **Option 2(b)** which balances regulatory oversight with proportionality and recognises the protective function of these funds. Option 1 is excessively burdensome and risks compromising the operational sustainability of schemes like Protect.

While we are supportive regulation of employee entitlement funds, trying to shoehorn redundancy funds into a regime intended for retail investors is not the right approach. Therefore a modified, fit-for-purpose model would retain the benefits of transparency, good governance etc while removing impractical factors and unintended consequences, such as the conflict with the various requirements of Part 5C that apply to retail managed investment schemes.

C1Q3: Do you foresee any practical difficulties with this option?

Yes. Practical difficulties include:

- The six critical issues outlined in C1Q1
- Limited resources and costs of compliance
- Considerable, costly changes to IT system which would extend the timeline for implementation

These requirements are misaligned with Protect's purpose and would divert resources from benefit delivery to administrative compliance.

Dispute resolution: external dispute resolution requirements under section 912A(2) of the Corporations Act, such as Australian Financial Complaints Authority (AFCA) membership, may be unnecessary for employee redundancy funds, as disputes are typically governed by industrial laws and agreements. That is failure to make a contribution is a breach of an EBA. The high cost of AFCA complaints could also reduce funds available for employee benefits, particularly impacting smaller funds.

Responsible person - organisational competence: regarding AFSL requirements, we agree that internal organisational competence or outsourcing to qualified service providers is appropriate for managing employee redundancy funds. Responsible managers should have relevant experience, and their expertise in managing redundancy entitlements should be recognised as valid under AFSL requirements, rather than requiring prior experience specifically in financial products. This is opposed to the current ASIC evaluation where responsible managers must be able to demonstrate relevant education and experience in a certain financial product.

C1Q4: For existing fund operators, what additional compliance costs do you expect to incur if this option is adopted?

Refer to the Appendix at the end of this document for a cost summary of all Options.

For this Option our indicative estimate is $956K in one-off costs and $468K in annual incremental costs.

An IT system overhaul would be a major component of time and cost and would include the complexity of incorporating the withdrawal facility referred to above in C1Q1.

Cost of compliance: the regulatory burden may be too great for smaller funds, which often lack the resources to implement and maintain all required changes. This could lead to fund closures, consolidation into larger funds, and reduced market competition. Smaller funds would be best placed to comment on this matter rather than Protect.

C2Q1: Do you agree with ASIC providing a transition period if this option is adopted? Please provide reasons.

Yes. If Option 1 is adopted, a transition period is essential to:

- Apply for an AFSL,
- Register schemes,
- Implement new compliance structures.
- Amend the Trust Deed
- Review and update internal policies; train staff of new procedures
- Develop a compliance plan
- Amend the IT system
- Establish a compliance committee and committee charter
- Transition from Special Purpose to General Purpose financial statements

Immediate compliance would be unmanageable given the breadth of change required and necessary based on small internal resources.

C2Q2: If a transition period is provided, do you agree with the proposed end date of 1 September 2026? Please provide reasons.

This timeframe is highly ambitious. Given the extent of expected change in the IT system, mainly to incorporate withdrawal provisions, we expect an 15 month transition period would be necessary – a proposed end date of 1 April 2027. System requirements must be based on a firm and final platform of regulatory framework, trust deed, operational policies and business rules. We would expect months of legal and consulting advice, board approvals of policy and operational planning would need to precede the commencement of IT system changes.

Section D – Option 2: Grant Relief from Specific Obligations

Option 2(a)

D1Q1: Please provide your feedback on this option, including reasons in support of your views.

As mentioned above in response to **C1Q1**, this Option results in an apparent conflict between the Fringe Benefits Assessment Act and the Corporations Act; as well as various provisions of Chapter 5C of the Corporations Act being unworkable.

While **Option 2(a)** acknowledges the distinct nature of worker entitlement funds, the above matters demonstrate this Option is not fit for purpose.

Option 2a (and 2b) would allow funds to rely on ASIC's existing Regulatory Guides for further assistance with interpretation and implementation – providing some certainty.

D1Q2: Do you agree with the provisions from which relief would be granted? If not, why?

Yes. The identified provisions impose unnecessary obligations that do not improve consumer protection in this context.

We agree that it is sensible to provide relief from hawking, and design/distribution obligation and PDS provisions, as individual employees do not "apply" to join and are not making an investment decision. Our rationale is contained in our response to **C1Q1**.

D1Q3: Do you consider the relief should be subject to any additional conditions? Please give reasons.

Yes. We support conditions requiring:

- Clear and accessible information for employers and employees on fund operations, benefits, and governance; and
- Public access to key documents on the fund's website.

This ensures transparency without imposing irrelevant disclosure.

Given the absence of a PDS, we are seeking feedback on whether conditions should be imposed on the relief to provide tailored information to employers and employees about the fund (see question D1Q3) CP384 – paragraph 35(b)

We support the idea of transparency and disclosure. ASIC should note the practical implications of the word "provide" which suggests a proactive communication. As mentioned earlier, membership of Protect arises from an industrial negotiation which we are not a party to. Our first contact with an employer is after that agreement has been made (and an EBA approved by Fair Work Australia). After the employer registers, then they register their employees. The Fund would not be in a position to proactively provide information prior to registration as the employer and employees are not known to us. If "provide tailored information" was amended to "tailored information must be accessible to prospective employers and employees". This would allow the parties to view relevant information on the Fund's website.

Sufficient information would be provided to Members without the need for a PDS via:

Audited Financial Statements lodged with ASIC under Option 2a & b. Currently, a consolidated financial summary is disclosed, based on audited special purpose financial statements.

Publishing an Annual Report on the Fund's website which discloses investment strategy and investment performance. This is currently done.

Member eligibility for claiming entitlements is explained on website. This is currently done.

The Process for making claims is explained on website. This is currently done.

All of the above could be added as additional conditions.

D1Q4: Do any of the other provisions in Table 1–Table 4 in the appendix also result in compliance issues that require relief? If so, please provide details.

Our key concerns are as discussed in **C1Q1**:

- Incompatibility of the mandated content of Product Disclosure Statements
- Hawking Provisions
- Incompatibility of the Design and Distribution (DDO) provisions

These matters make Option 2(a) unworkable for redundancy funds.

D1Q5: Is this your preferred option for the regulation of employee redundancy funds? If so, please explain why you prefer it over Option 1, Option 2(b) and Option 3.

This is not our preferred option. While preferable to Option 1, we support **Option 2(b)** (with appropriate modification of the licensing regime to employee entitlement funds) as it provides a series of disclosures, transparency and good governance practices. Option 2(a) introduces compliance complexity not justified by risk levels or member need.

D1Q6: Do you foresee any practical difficulties with this option?

Yes – refer to D1Q4 above.

The need to hold an AFSL and navigate limited exemptions will require resources and possibly alter trust deeds. It may also lead to partial duplication of effort already governed under existing laws (e.g. Fringe Benefits Tax law, income tax law, and the Corporations Act).

D1Q7: For existing fund operators, what additional compliance costs do you expect to incur if this option is adopted?

Refer to the Appendix at the end of this document for a cost summary of all Options.

For this Option our indicative estimate is $626K in one-off costs and $423K in annual incremental costs.

Option 2(b)

D2Q1: Please provide your feedback on this option, including reasons in support of your views.

Protect supports **Option 2(b)** as it improves transparency and governance standards without exposure to the concerns we raised in response to Option 1 and Option 2(a).

As outlined under C1Q1 and C1Q2, full application of MIS obligations introduces structural and legal inconsistencies with existing trust and FBT frameworks, particularly around withdrawal rights and liquidity provisions.

Option 2(b) offers a balanced solution—upholding governance standards through an Australian Financial Services Licence, without the application of incompatible provisions from Chapter 5C.

D2Q2: Do you agree with the provisions from which relief would be granted? If not, why?

Yes. AFSL licencing and compliance obligations introduce a level of oversight and legislative control that enhancing governance performance and transparency. At the same time, this option provides relief from managed investment scheme requirements that create operational inefficiencies as previously outlined and provides minimal additional protection to employees.

Our rationale for supporting the provisions for relief are explained in the criticisms of Options 1 and 2 above.

D2Q3: Do you consider the relief should be subject to any additional conditions? Please give reasons.

Yes. We suggest:

- Formal Compliance Plan and Compliance Plan Auditing
- Compliance Committee; and
- Key fund governance and risk disclosures be made available on the website as per item D1Q3.

D2Q4: Do any of the other provisions in Table 1–Table 4 in the appendix also result in compliance issues that require relief? If so, please provide details.

The obligations under Sections 912A and 912B provide a sound framework for ensuring that fund operators act with integrity, maintain proper oversight, and have the financial and operational capacity to meet their responsibilities.

However, we urge ASIC to apply these provisions in a manner that recognises the distinct purpose of redundancy funds—namely, the preservation and payment of worker entitlements, not investment returns.

Therefore, consideration should be given to the application of a "Responsible Manager"; Redundancy Funds' management are experienced in Managing Redundancy Funds, with a low risk capital preservation focus. This may differ from a "Responsible Manager" who provides financial services in other contexts covered by the AFSL framework. Further clarification (rather than relief) may be necessary.

Otherwise, the relief granted under 2b on Table 1-4 is appropriate.

D2Q5: Is this your preferred option for the regulation of employee redundancy funds? If so, please explain why you prefer it over Option 1, Option 2(a) and Option 3.

Yes, this is our preferred option – refer to D2Q1.

D2Q6: Do you foresee any practical difficulties with this option?

Subject to resolving exactly how redundancy funds would be regulated under Chapter 7 of the Corporations Act (ie, would they be providing a form of financial service, or would they be considered to issue a (potentially new form of) financial product?), Protect considers there should be limited difficulties in it complying with the requirements of Chapter 7.

However, clarity will be needed on various aspects of regulation of redundancy funds under Chapter 7, including what financial services are being provided, what constitutes sufficient compliance with the licensing conditions and how financial reporting is to be undertaken (i.e Special Purpose vs General Purpose financial statements).

Notwithstanding that Protect is constantly seeking to uplift its governance and operations to meet the standards that its stakeholders expect of an entity that manages significant worker entitlements, it is still likely that appropriate modification and transitional requirements will be necessary for an industry that has been relieved from financial services regulation since its inception to be brought within the ambit of the requirements of Chapter 7 of the Corporations Act. Protect therefore welcomes the opportunity to engage extensively with ASIC to right-size the regulation of redundancy funds.

D2Q7: For existing fund operators, what additional compliance costs do you expect to incur if this option is adopted?

Refer to the Appendix at the end of this document for a cost summary of all Options.

For this Option our indicative estimate is $268K in one-off costs and $131K in annual incremental costs.

D3Q1: Do you agree with ASIC providing a transition period if this option is adopted? Please provide reasons.

Yes. Without a transition period, funds will face intense pressure to restructure their governance, financial and legal frameworks quickly—an outcome that risks errors and undermines benefit delivery.

D3Q2: Do you agree with the proposed date of 1 September 2026? Please provide reasons.

For the reasons set out in Option 1 (C2Q2 above) we consider IT system change will dictate the lead time in reaching a state of readiness. In the event that ASIC reaches a final decision by 31 December 2025, we suggest that reasonable timeframes to reach compliance readiness are:
Option 1 – 15 months = 1 April 2027
Option 2(a) – 12 months = 1 January 2027
Option 2(b) – 9 months = 1 October 2026
Option 3 – 3 months = 1 April 2026

Section E – Option 3: Remake the Existing Relief with Additional Conditions

E1Q1: Please provide feedback on this option, including reasons in support of your views.

While Option 3 is practical and, as described by ASIC as "appropriate and reasonable" (CP384, paragraph 49) Protect already meets or exceeds all proposed conditions and sees this approach as formalising existing best practice rather than improving it.

Historically, ASIC has provided exemptions to redundancy funds with an expiry date of five years, although most recently the exemption was provided for 18 months. The uncertainty caused by expiry dates presents an operational risk for the funds and so our preference is for an Option which is (more) permanent – as all other options are.

Perceptions of being 'exempt' from regulation that is otherwise standard for asset-holding entities no longer meets public expectations. Depending on transition requirements for compliance expressed by other redundancy funds, a consideration may be to use option 3 as a transition step ie meet Option 3 requirements by April 2026, then Option 2(b) requirements some time later.

It is not as clear how redundancy funds could apply ASIC's regulatory guidance where it is exempted from the requirements to which that regulatory guidance applies.

E1Q2: Please provide feedback on each of the conditions in proposal E1(a)–E1(e).

- **E1(a):** Already followed. Fund assets are held in trust, separate from other assets. Also an FBT Act requirement
- **E1(b):** Protect provides some public information via website and in promotional material despite it not currently being a regulatory requirement.
- **E1(c):** Audited special purpose financial statements are prepared annually and can be made available online. A summary of accounts is available in our Annual Report on our website each year.
- **E1(d):** Protect has policies for conflict management consistent with AFS obligations.
- **E1(e):** ASIC has been notified of reliance on current relief.

We support each condition as they are practical and in line with our existing governance framework.

E1Q3: Are there any additional or alternate conditions that would be reasonable and practicable?

Other conditions we support would result in replicating Option 2(b)

E1Q4: Is this your preferred option for the regulation of employee redundancy funds? If so, please explain why you prefer it over Options 1 and 2.

Option 3 avoids structural disruption, preserves benefit security, and promotes good governance without duplicating existing standards. It is the most cost-effective and practical path for the sector.

Protect considers that option 2(b) provides a higher standard of governance practices and better meets community expectations for transparency and disclosure, provided the AFS licensing regime in Chapter 7 of the Corporations Act can be appropriately modified to the reality of redundancy funds. However, there may be merit in an 'enhanced' relief regime applying for a period of time in order for the redundancy fund industry to make the necessary changes (or for ASIC to resolve any conflicting views) to be able to transition into the AFS licensing regime with the assurance that it will be able to comply with those requirements from Day 1.

E1Q5: Do you foresee any practical difficulties with this option?

No. We are already compliant with nearly all proposed conditions. Implementation would involve reviews and updates to existing policies, procedures and documentation appearing on our website.

E1Q6: What additional compliance costs do you expect to incur if this option is adopted?

Refer to the Appendix at the end of this document for a cost summary of all Options.

For this Option our indicative estimate is $75K in one-off costs and $85K in annual incremental costs.

E2Q1: Do you agree with ASIC not providing a transition period if this option is adopted? Please provide reasons.

Yes. We expect to be compliant by 1 April 2026. No additional transition time is needed

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Conclusion

Protect supports a tailored, practical regulatory model that preserves benefit security for workers while maintaining financial transparency and governance. **Option 2(b)** provides the optimal pathway forward and formalises long-standing practices already adopted by Protect and other responsible fund operators.

APPENDIX – COST ESTIMATES

This appendix sets out indicative cost estimates for the different regulatory options. These figures are necessarily high-level. Given the limited time available for preparing this response, we have not sought formal quotes from external providers.

The estimates are incremental only. That is, they reflect additional costs we expect to incur under each option. Existing baseline costs – such as external audit, preparation of financial statements, and directors' and officers' insurance – are not included.

We have assumed that an additional Compliance Manager would be required under Options 1 and 2(a), given the greater complexity of obligations.

Based on our operational experience, IT system changes will be the largest single cost driver, both in dollar terms and in the length of time needed for implementation. For example, the cost estimate of $600,000 under Option 1 is informed by the actual cost of a complex IT project completed during 2024–25. A major element of this would be the need to accommodate Corporations Act withdrawal provisions, which are structurally inconsistent with redundancy fund operations and would require extensive redesign.

INDICATIVE ONLY	Option 1		Option 2a		Option 2b		Option 3	
Cost detail	Initial / One-Off	Annual / Ongoing	Initial / One-Off	Annual / Ongoing	Initial / One-Off	Annual / Ongoing	Initial / One-Off	Annual / Ongoing
MIS								
ASIC Registration as MIS	$3,100		$3,100		N/a	N/a	N/a	N/a
Responsible Entity set up & annual fee	$5,000	$1,500	$5,000	$1,500	N/a	N/a	N/a	N/a
Full Time Compliance Manager		$200,000		$200,000	N/a	N/a	N/a	N/a
Consultants for compliance	$100,000		$100,000		N/a	N/a	N/a	N/a
PDS development - consulting & legal	$50,000	$10,000	N/a	N/a	N/a	N/a	N/a	N/a
PDS publishing / PR costs	$25,000	$5,000	N/a	N/a	N/a	N/a	N/a	N/a
PDS printing & mailing	$10,000	$30,000						
Annual Meeting of Members		$50,000		$50,000				
AFSL								
ASFL application advice costs	$30,000		$30,000		$30,000		N/a	N/a
AFSL registration fees	$8,000	$1,500	$8,000	$1,500	$8,000	$1,500	N/a	N/a
Consultants for compliance					$50,000	$50,000	$30,000	$25,000
AUDIT/FIN STATEMENTS								
Compliance Plan Audit		$50,000		$50,000	N/a	N/a	N/a	N/a
General Purpose Fin Statements	$25,000	$30,000	$25,000	$30,000				
Special purpose financial statements						$15,000		$15,000
Annual audit		$60,000		$60,000		$40,000		$40,000
Other								
Directors & Officers Insurance		$20,000		$20,000		$20,000		
Legal - Trust Deed review/ amendments	$80,000		$40,000		$20,000		$10,000	
IT System changes	$600,000		$400,000		$150,000		$30,000	
Website and brochure updates (*in house with consultant review*)	$20,000	$10,000	$15,000	$10,000	$10,000	$5,000	$5,000	$5,000
	$956,100	$468,000	$626,100	$423,000	$268,000	$131,500	$75,000	$85,000