

CORPORATE SUPERANNUATION ASSOCIATION Inc.

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Professor Ian Ramsay
Financial System External Dispute Resolution Review Panel
C/o EDR Review Secretariat
Financial System Division
Markets Group
The Treasury
Langton Crescent
PARKES ACT 2600

Delivery via web page

Dear Professor Ramsay

ISSUES PAPER: REVIEW OF THE FINANCIAL SYSTEM EXTERNAL DISPUTE RESOLUTION FRAMEWORK

We refer to the invitation to comment on the above Paper issued on 9 September 2016.

The Corporate Superannuation Association

Established in 1997, the Association is the representative body for large corporate not-for-profit superannuation funds and their employer-sponsors. The Association now represents a total of 22 funds controlling \$72 billion in member funds, held in a total of some 560,000 individual accounts. Of these funds, 12 have outsourced trustee services but maintain significant employer interest through policy committees. In general, these funds are sponsored by corporate employers, with membership restricted to employees from the same holding company group, but we also include in our membership two multi-employer funds with similar employer involvement and focus. A number of our funds have defined benefit divisions.

Size, in terms of funds under management, ranges from \$49 billion to \$64 million as at 30 June 2015. Some of the smaller funds have their place in the pension fund structures of international groups, hence play an important role in the care and welfare of the worldwide workforces of these groups.

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We have restricted our comments to the external dispute mechanism for superannuation funds.

External dispute resolution structure for superannuation funds

The system established through the Superannuation Complaints Tribunal (SCT), by contrast with the other dispute resolution services, involves the application of specific legislation and the processes are thereby prescribed.

Structure

The SCT is established as a Tribunal, its Chair appointed by the Governor-General and its Members selected for a range of specific skills relevant to the inquiry into and resolution of superannuation complaints.

Remedies

If the SCT determines that a decision by the trustee was not 'fair and reasonable', it may only exercise its powers to place the complainant, as nearly as practicably, back into the position they would have been before the decision was taken. The SCT cannot award costs or damages, or provide a remedy where there has been no adverse practical outcome or financial loss. By contrast, the Financial Ombudsman Service and the Credit and Investments Ombudsman can negotiate, compromise, and award compensation and damages (subject to monetary limits). These processes and potential remedies are different in nature. This is one of the reasons why the amalgamation of the superannuation complaints mechanism with the other external complaints services would be a difficult process.

One-stop shop

We understand the attraction of providing the public with a single portal providing access to dispute resolution facilities. We believe, in view of the very different structure of complaints resolution in superannuation, that the portal should be no more than a filter to the appropriate body to deal with the particular complaint.

Single body

We would be concerned by an approach for superannuation identical to the current approach used by FOS and CIO. The legal framework within which the SCT operates, outlined above, differs from the ASIC approved industry operated services of the FOS and CIO. For superannuation complaints to fit within this structure, legislation would have to be changed radically and the approach would be very different from the current arrangements for superannuation. Restitution would follow a very different path. Whilst superannuation trustees potentially have the resource to restore a person to the situation prior to a trustee decision, the application of a negotiated settlement or damages (albeit limited) would expose trustees to previously unexplored risk. The approach involving negotiated settlement is appropriate for a body that has a commercial interest in a transaction, but does not work well for a body acting purely in a fiduciary capacity.

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Funding

The Tribunal has a specific allocation from federal revenues, but has no assets. ASIC is entrusted with disbursing its funding. In the absence of assets and legal persona the SCT cannot pay its own expenses, and, under current arrangements, is reliant on ASIC for the provision of premises and meeting of expenses. This is an unsatisfactory situation.

It is clear that the funding arrangements for the SCT are inadequate for current tasks; hence the Tribunal is underresourced and struggling to deal with the workload, with lengthy decision and resolution times for complaints. This issue can be resolved in a number of ways.

- Allocation of a larger funding share supported by the financial institutions funding levy. If this occurred, the burden of cost would continue to be shared across all APRA regulated funds.
- A user pays approach. This approach could result in fairer allocation of the burden to those funds that field many complaints. However, there is concern that the knowledge that the user fund is liable for costs may result in targeting of funds by vexatious or unscrupulous claimants. This may lead to disproportionate costs being borne by the members of the target fund.

Unless resourcing is made adequate and complaints are dealt with more quickly, the courts will continue to be the forum of choice for TPD claims. Where the forum for resolution is a court, the low cost solution of the SCT is no longer adopted, to the detriment of the complainant (whether success funded or otherwise) and of the members of the fund involved in the action.

Conclusion

Structure for superannuation

We support the continuation of a Tribunal structure, because, in our view, specialist expertise is required in the field of determining superannuation complaints, and a Tribunal structure provides the skills.

Regulatory oversight by ASIC

Regulatory oversight by ASIC is appropriate to the FOS and the CIO given their establishment and self-government by industry. The SCT is a statutory body operated independently of the superannuation industry and oversight by ASIC is unnecessary and inappropriate.

Funding

More funding is required to deal with the volume and complexity of complaints. We consider that increased resourcing is the route to overall cost reductions for funds and their members through reduced involvement of the courts. We support continuation of the financing of the Tribunal through the Financial Institutions Funding Levy.

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We support an increase in the resourcing allocated for use by the Superannuation Complaints Tribunal and a clear statement of the purposes of this resourcing.

We are happy to provide further information as required.

Yours sincerely



Mark Cerché
Chairman
Corporate Superannuation Association