

# CORPORATE SUPERANNUATION ASSOCIATION Inc.

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5 July 2018

Ms Helen Coonan  
Chairman  
Australian Financial Complaints Authority  
GPO Box 3  
Melbourne VIC 3001

*Delivery via email to [submissions@afc.org.au](mailto:submissions@afc.org.au)*

Dear Ms Coonan

## **DRAFT AFCA RULES**

We refer to the invitation to comment on the Draft Rules issued on 1 June 2018.

### **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 18 funds controlling \$51 billion in member funds, held in a total of some 274,000 individual accounts. Of these funds, 10 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 three multi-employer funds with similar employer involvement and focus. A number of our funds have defined benefit divisions. 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.

We have the following comments on the Draft Rules.

### **Timing of lodging complaints with AFCA**

#### *Potential lodging of complaints before internal dispute resolution has been explored*

We are concerned that complaints may reach AFCA without going through internal dispute resolution processes. In fact, they can be lodged before the original decision is made, and this could be used as a tactic in trying to put pressure on the trustee.

Further, in respect of a complaint about the payment of a death benefit, the fund will be notified but unlike other complaints, the complaint will not be sent back to the trustee for resolution. Given that the complaint can be made without internal dispute processes being undertaken, it does not give the trustee opportunity to resolve the issue before the complaint is lodged with AFCA.

## CORPORATE SUPER ASSOCIATION

It appears that the rules as designed to ensure that trustees are not required to reconsider death benefits decisions under the internal dispute processes where there is a complaint. While it is appreciated that some trustees would want to avoid such disputes as they often involve issues that are very personal, it is considered that where a decision in relation to such benefits is challenged, further relevant information is made available to the trustee. In such cases a more informed decision can be made. It is often the case that the trustee is not aware of potential beneficiaries when the initial decision is made.

### *Potential lodging of complaints after an extended period*

We have a number of concerns regarding the time limits for claims.

#### Draft Rule B.4.1.1 (b)

Draft Rule B.4.1.1 (b) indicates that AFCA will consider a TPD claim in relation to a member, who did not cease employment because of disability, within six years after the financial firm's decision about the disability claim. The requirement in paragraph B.4.1.1 (a) that the claim be lodged within 2 years of ceasing employment, is absent in paragraph (b).

This absence of the time limit from cessation of employment with the employer, in cases where the disability did not cause cessation of employment, implies that the claim for a TPD benefit could be made (say) twenty years after ceasing employment, and if it is not approved the complainant has six further years to complain to AFCA. This would extend the period beyond any reasonable time limit, and past, for example, the 15-year limitation period that seems to apply in Victoria.

#### Draft Rule B.4.1.5

We are concerned about the potential extended time when a complaint may be lodged with the Trustee well after the event, and following the internal dispute mechanism response, another two years applies to the complainant's time to lodge with AFCA. In our view, this two-year limit is too long and has the potential to extend claims unnecessarily.

### **Costs**

We await with some concern further details of the cost regime, including the right of AFCA to require a trustee to obtain further medical or legal comment up to \$5,000. One concern is that the cost structure may provide a stick rather than a carrot to settle a complaint, because the cost to determination could be material.

We are happy to provide further information as required.

Yours sincerely



pp Mark N Cerché  
Chairman  
Corporate Superannuation Association