



14 June 2017

Manager
Financial Services Unit
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: EDR@treasury.gov.au

Dear Sir/Madam

Review of the financial system external dispute resolution and complaints framework

As the union representing staff in the Superannuation Complaints Tribunal (SCT), the Community and Public Sector Union (CPSU) welcomes the opportunity to make a submission to this Review. The CPSU previously made a submission to this Review in January and this supplementary submission focuses on the proposal to merge the SCT into a new external disputes resolution body, known as the Australian Financial Complaints Authority (AFCA).

The SCT and our members who work there perform an essential role in providing a free dispute resolution service that is widely seen as fair, independent and effective by both industry and consumers alike. Superannuation is both universal and compulsory, meaning that any changes will affect all Australians. The SCT was set up specifically to handle complaints and given statutory powers to protect Australians. The rationale for establishing the SCT was the need to ensure legislative protection for complainants.

The CPSU acknowledges there have been delays in processing superannuation complaints, however, this is due to chronic underfunding of the SCT. It is not the fault of the SCT, its employees or the statutory model. The SCT is currently industry funded, receiving levies collected by APRA, which is then provided to ASIC to distribute to the SCT. The funding model has been criticised as indirect and inefficient. Finding a more direct, long term funding solution for the SCT should be the priority, not dismantling a highly regarded statutory body.

CPSU members working in the SCT are deeply concerned that the proposal to create a new external dispute resolution body that is a company limited by guarantee will move statutory powers from a tribunal to a private company. The SCT has Government appointed decision makers with legislative powers, whereas the new AFCA would appoint its own decision makers. One member described the proposal as effectively privatising a public right.

One of the strengths of the existing SCT is that it is widely held in high regard because of its independence and integrity. Concerns have been raised about the independence of a new AFCA. Other industry schemes such as the Financial Ombudsman Service (FOS), the Credit & Investments Ombudsman (CIO) have been criticised for being too close to their constituent members. Furthermore, there is concern that if the SCT is rolled into the AFCA,

superannuation complaints will disappear in an ocean of financial sector complaints, which are far more numerous.

Staff have also raised concerns that the proposed legislation for the new AFCA is complex and the funding is even more complicated. There was also no indication in draft legislation that the AFCA would be a “no costs jurisdiction”, meaning that complainants could be lumped with costs. It has also been noted that there was nothing in the legislation that actually improves the experience for superannuation complainants.

The new AFCA is set to have significant powers but without any oversight. The new AFCA would have no Freedom of Information rights and no consumer protections. The AFCA could decide to withdraw a complaint without recourse to appeal. Currently, individuals can appeal to the Federal Court, over a complaint withdrawal but no such provision is proposed under the new AFCA.

Staff also have concerns that the new AFCA would have the power to require the provision and submission of documents including people who are not complainants, or make a person a joined party whether they want to be or not, for example, it could compel doctors to provide their records.

The CPSU supports maintaining a separate SCT and is unconvinced that the proposed AFCA will improve outcomes for Australians in the Superannuation space. The SCT has the confidence of industry and consumers with regards to independence and integrity, to an extent that industry schemes simply do not have. Rather than seeking to merge the SCT, through further consultation with stakeholders and willingness by Government, solutions should be found and implemented to improve the current Tribunal.

For any further information, please contact Graeme Price, CPSU Organiser via email graeme.price@cpsu.org.au or call (03) 8620 6371.

Yours sincerely,



Melissa Donnelly
Deputy Secretary