



AUSTRALIAN INSTITUTE of  
SUPERANNUATION TRUSTEES

26 March 2021

The Director  
AFCA Review Secretariat  
Financial System Division  
Treasury  
Langton Crescent  
PARKES ACT 2600

By email to: [AFCAreview@treasury.gov.au](mailto:AFCAreview@treasury.gov.au)

Dear Sir/Madam,

### **Review of the Australian Financial Complaints Authority**

**In brief: AIST calls for improvements to be made to AFCA's initial handling of complaints, handling of conciliation conferences, and overall administration to ensure complaints are resolved in a fair, efficient, timely and independent manner.**

The Australian Institute of Superannuation Trustees (AIST) is a not-for-profit organisation whose membership consists of the trustee directors and staff of industry, corporate, and public sector superannuation funds.

As the principal advocate and peak representative body for the \$1.4 trillion profit-to-members superannuation sector, AIST play a key role in policy development and is a leading provider of research.

AIST advocates for financial wellbeing in retirement for all Australians regardless of gender, culture, education, or socio-economic background. Through leadership and excellence, AIST supports profit-to-member funds to achieve member-first outcomes and fairness across the retirement system.

#### **Executive Summary**

AIST is responding to consultation for the independent review of the Australian Financial Complaints Authority (AFCA).

AIST acknowledges the AFCA scheme has been in operation for a relatively short period of time and it highlights the positive feedback received from industry regarding the AFCA member forums and the approach documents. AIST welcomes the opportunity to provide feedback from

industry to assist AFCA in resolving complaints in a fair, efficient, timely and independent manner.

In close consultation with AIST member superannuation funds, AIST notes five key points which AFCA should address:

1. **Initial complaints handling** – handling of complaints by AFCA should be improved
2. **Case Management** – approaches differ between Case Managers, and Determinations sometimes differ from Preliminary Assessments, highlighting either a lack of knowledge or the application of different criteria to the same facts; timeframes are inconsistent and arbitrary and sometimes unrealistic; AFCA should allow for Procedural Fairness where a Determination differs from a Preliminary Assessment
3. **Administration** – AFCA’s administrative processes should be improved to address identified issues
4. **Systemic Issues** – improved consistency and clarity on how systemic issues are identified and referred to a regulator; AFCA should consider its role in identifying and referring systemic issues in the context of the *Corporations Act 2001*.
5. **Fee structure** - Charging a high-case fee in circumstances where AFCA has confirmed the propriety of the fund’s position; the fee structure of such cases should be reviewed.

AIST recommends that AFCA’s internal review mechanism be in operation for a reasonable period of time so that an appropriate assessment can be made on its value.

AIST submits that the following further enhancements should be made to ensure the external dispute resolution (EDR) scheme is appropriately calibrated and operating effectively:

- Enhancing of quality standards within AFCA
- Aligning its processes to the spirit of a fair and independent approach
- Ensuring timely dispute resolution through improved administration
- Implementation of efficient methods that reduce the burdens on members of the scheme

#### **Delivering against statutory objectives**

**Is AFCA meeting its statutory objective of resolving complaints in a way that is fair, efficient, timely and independent?**

- a) **Is AFCA’s dispute resolution approach and capability producing consistent, predictable and quality outcomes?**

AIST outlines three key areas that address this question: initial complaints handling, case management, and administration. Recommendations are set out to address each key point.

## Recommendations

AIST consulted extensively with superannuation funds through forums and one-on-one settings to better inform its position on the independent review of the scheme and to detail specific examples that support each key point raised in this submission.

AIST is able to share specific cases anonymously and is open to a direct discussion with Treasury to highlight how these cases relate to the terms of reference.

### 1. Initial complaints handling – initial handling of complaints by AFCA should be improved

- Clearly frivolous complaints without any evidence should not be considered and funds should not be required to make a full submission in response to them.
- AFCA should exercise its powers to make determinations in these cases.
- Disclosure issues related to any type of fees should be addressed on a factual basis. Initial requests for information should seek to address the issue at hand.
- AFCA asks for default information in its initial requests that is not always relevant to the complaint, which creates unnecessary strain to the process of responding to an initial request.
- Processes should ensure that an initial complaint is not encouraged by AFCA to become the basis for an exploratory exercise.
- AFCA to review the triage process for accuracy of complaint referrals; an erroneous referral can ultimately impact a timely decision and the cost to the financial firm.

### 2. Case Management – arrangements for conciliation conferences should be better managed

- **Conciliations:** AFCA to ensure consistency in how conciliations are managed. Premature conciliations before all evidence has been reviewed should not occur; unnecessary conciliations for issues like disclosure of fees should not be considered; flexibility in the scheduling of conciliations should be considered.
- **Conciliations:** AFCA should ensure all conciliators are properly skilled and across the details of the case, with a genuine 'without prejudice' approach.
- **Determinations/Procedural Fairness:** Reasons should be provided where Determinations differ from Preliminary Assessments. Where there is a difference, Procedural Fairness should be afforded to both parties.
- **Timeliness:** AFCA should consider and where appropriate review the process of death objections – experience and feedback from financial firms indicates some death distribution matters are taking an excessive amount of time to reach an Ombudsman.
- **Approach:** Burden of proof should be the same for all parties to a complaint, with the same level of substantiation and evidence required for all.
- **Deadlines:** Inconsistent deadlines

### **3. Administration – AFCA’s administrative processes should be improved to address identified issues**

- Streamlining the administrative burden to AFCA and financial firms by enhancing the portal to accept a wider range of formats, character limits, and documents – e.g. emails and call recordings. Enhancements to the portal should also streamline case search functions.
- Funds tend to undertake what can be reasonably considered to be AFCA administrative tasks – e.g. separation and redaction of documents.
- Unclear, duplicated, or irrelevant information requests should be eliminated through improved internal processes and work management systems.

#### **b) Are AFCA’s processes for the identification and appropriate response to systemic issues arising from complaints effective?**

### **4. Systemic Issues – AFCA’s approach to systemic issues to operate in line with legislative intention**

- AIST notes the need for clear and consistent processes for the identification of systemic issues and their referral (or non-referral) to a regulator, including processes to ensure there is no regulatory overlap of issues.
- AFCA should take into consideration whether matters have already been referred to and considered by a regulator, and if not, to exercise its power to refer a matter, not investigate.

#### **c) Do AFCA’s funding and fee structures impact competition? Are there enhancements to the funding model that should be considered by AFCA to alleviate any impacts on competition while balancing the need for a sustainable fee-for-service model?**

### **5. Fee Structure**

AFCA charges superannuation funds a membership fee and an additional fee-per-case above a specified limit. This creates the potentially perverse incentive for superannuation funds to compensate claims with no or limited merit. The additional cost is to the funds’ membership overall, which is not in the best interest of members.

AIST considers that this additional fee-per-case creates a distortion where some superannuation funds are subsidising the costs of other financial firms unfairly.

- AIST considers this structure unfair and not in the best interest of superannuation members
- AIST supports any measure that encourages financial firms to appropriately address and minimise the number of complaints received; however,

recommends the additional fee structure be reviewed so that it does not disproportionately punish financial firms.

- AFCA should consider to whom the extra costs between Preliminary Assessment and Determination should apply. The burden of this cost is shouldered by financial firms even when a Preliminary Assessment is in favour of the financial firm. AIST recommends this cost should be paid by the party against whom the Determination was found.

### **Internal review mechanism**

AIST reiterates its acknowledgement of AFCA's relatively short period of operation and therefore maintains that more time is needed before an appropriate assessment of its internal review mechanism can be made, and whether an internal review mechanism should extend to the substance of AFCA's decisions.

For further information regarding our submission, please contact Carlos Lopez, Policy & Regulatory Analyst, at [clopez@aist.asn.au](mailto:clopez@aist.asn.au).

Yours sincerely,



Eva Scheerlinck  
**Chief Executive Officer**

*The Australian Institute of Superannuation Trustees is a national not-for-profit organisation whose membership consists of the trustee directors and staff of industry, corporate and public-sector funds.*

*As the principal advocate and peak representative body for the \$1.4 trillion profit-to-members superannuation sector, AIST plays a key role in policy development and is a leading provider of research.*

*AIST provides professional training and support for trustees and fund staff to help them meet the challenges of managing superannuation funds and advancing the interests of their fund members. Each year, AIST hosts the Conference of Major Superannuation Funds (CMSF), in addition to numerous other industry conferences and events.*