

SUBMISSION

Submission to the
Australian Financial
Complaints Authority —
AFCA Funding
Consultation Paper

31 July 2018

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Mr Michael Ridgway
Australian Financial Complaints Authority
GPO Box 3
Melbourne VIC 3001

Via email: funding@afca.org.au

Dear Michael

AFCA Funding Consultation Paper

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission in response to the *AFCA Funding Consultation Paper* (Consultation Paper), provided to ASFA on 2 July, and the *AFCA Funding Model Overview* (Overview), published on the AFCA website on the same date.

About ASFA

ASFA is a non-profit, non-political national organisation whose mission is to continuously improve the superannuation system, so all Australians can enjoy a comfortable and dignified retirement. We focus on the issues that affect the entire Australian superannuation system and its \$2.6 trillion in retirement savings. Our membership is across all parts of the industry, including corporate, public sector, industry and retail superannuation funds, and associated service providers, representing over 90 per cent of the 14.8 million Australians with superannuation.

If you have any queries or comments in relation to the content of our submission, please contact Andrew Craston on (02) 8079 0817 or by email acraston@superannuation.asn.au.

Yours sincerely

Glen McCrea
Deputy Chief Executive Officer and Chief Policy Officer

1. General comments

ASFA acknowledges the significant workload involved in establishing the Australian Financial Complaints Authority (AFCA) and preparing it to receive complaints from 1 November 2018. ASFA welcomes the efforts made by AFCA staff (and, previously, staff of the Financial Ombudsman Service working on the transition) to engage with ASFA and our members as it prepares to bring the APRA-regulated superannuation sector into an ombudsman-style regime for external dispute resolution.

With respect the funding of AFCA, ASFA acknowledges the requirement for an interim funding model for superannuation trustees who are AFCA members.

ASFA understands that developing an appropriate long-term funding model (for superannuation trustee members of AFCA) will require data that is not currently available – in particular, data on the volume of superannuation complaints, and data on the distribution of the type and complexity of superannuation complaints.

- ASFA notes that the Superannuation Complaints Tribunal's (the SCT's) confidentiality and secrecy provisions effectively limit the complaints data the SCT can provide to AFCA.
- In addition, compared with the SCT, it is likely that resolution pathways within AFCA will differ for some types of complaints – which will be reflected in different resource requirements.

ASFA considers that the proposed time period for the operation of the interim funding model (to the end of the 2020-21 financial year), should be sufficient for AFCA to establish an evidence base of complaint volumes/complexity to inform development of an appropriate long-term funding model.

That said, ASFA considers it important that there be scope for AFCA to adjust its long-term funding model (once it has been established). It may be the case that the volume/complexity of complaints received by AFCA during the operation of the interim funding model is atypical. As such, ASFA recommends that AFCA continue to monitor and assess the nature of the superannuation complaints it receives, and that it reviews the long-term funding model after an appropriate period of time.

With respect to development of the long-term funding model (for superannuation trustee members of AFCA), it would be important for industry to have sufficient time to respond to any future proposal through the AFCA consultation process.

2. Interim funding model

ASFA has a number of comments regarding the methodology for the interim funding model for superannuation trustee members of AFCA.

Levy estimate for 2018-19

The proposed total levy for superannuation trustee members for the 2018-19 financial year is \$6.9 million. ASFA understands that the total levy covers:

- the first eight months of AFCA's operations and superannuation complaint handling (from 1 November 2018 to 30 June 2019)
- the proportionate share of AFCA's establishment costs attributable to superannuation trustee members.

ASFA understands that data limitations preclude AFCA from providing estimates of costs with respect to superannuation complaints. However, there is also only limited information in the Consultation Paper

regarding the costs of establishing and operationalising AFCA, and the share of those costs attributable to superannuation trustee members. As noted in the Consultation Paper, relevant cost categories would include:

- legal, financial, audit and other compliance costs
- website development, and various technology and communications costs
- general overheads.

More broadly, AFCA should prepare, as soon as is practicable, a Cost Recovery Implementation Statement, consistent with the practice of APRA and ASIC in respect of their user-pays regimes, and consistent with the *Australian Government Cost Recovery Guidelines July 2014* under the Australian Government Charging Framework.

At the conclusion of the 2018-19 financial year, AFCA should provide a detailed analysis of the costs incurred in relation to superannuation complaints, as well as AFCA's indirect costs that are attributable to superannuation trustee members, as soon as is practicable. This information should inform levy estimates for the 2019-20 financial year.

Use of APRA levy methodology

In the absence of viable alternatives, ASFA considers that the methodology for determining the Financial Institutions Supervisory Levies (the APRA levies) is an appropriate basis for the interim funding model with respect to superannuation trustee members of AFCA.

- ASFA notes that although we have expressed concerns about the determination of APRA levies over recent years, these largely relate to the transparency of the determination of specific agency funding requirements (that are ultimately reflected in the APRA levies).¹

Broadly speaking, the APRA levy for an individual registrable superannuation entity (RSE) reflects its share of total RSE assets (in the levy base). This is reflected in the methodology for the AFCA interim funding model for superannuation trustee members.

However, unlike the APRA levy methodology there are no minimum or maximum levy amounts incorporated in the AFCA interim funding model.

A major challenge of developing a cost-recovery methodology is to limit cross-subsidisation among the regulated population. This occurs where a disproportionately large or small levy is charged to a section of the population, when compared to the actual cost of regulation.²

The APRA levy methodology incorporates a minimum and maximum levy (for the 'restricted' levy component), as a means to limit cross-subsidisation. From year to year, APRA has made adjustments to the minimum and maximum amounts.

¹ ASFA's most recent submission in respect of the Financial Institutions Supervisory Levies (the APRA levies) is for the proposed levies for 2018-19:
https://www.superannuation.asn.au/ArticleDocuments/711/201815_APRA_Proposed_Financial_Institutions_Supervisory_Levies_for_2018-19.pdf.aspx?Embed=Y.

² APRA 2018, *Cost Recovery Implementation Statement: Prudential Regulation of Financial Institutions*, 6 July, page 4 (https://www.apra.gov.au/sites/default/files/apra_cris_2018-19.pdf).

AFCA could consider incorporating minimum and maximum levy amounts in the interim funding model, and leverage APRA's methodology in this regard. However, ASFA notes that a significant challenge in developing appropriate minimum/maximum levy amounts is the lack of complaints data (as noted above).

Definition of 'assets' in levy formula

The Consultation Paper provides the formula that will be used to determine levies for individual superannuation trustee members. For an individual trustee, its levy will be based on that trustee's share of total 'assets held for member benefits' (in the levy base).

ASFA understands that the specific metric to be used in the formula is *net assets available for members' benefits*, which RSEs are already required to provide to APRA in accordance with *Reporting Standard SRS 320.0 Statement of Financial Position*. ASFA considers that this is an appropriate metric.

Treatment of unfunded liabilities

During the 2016-17 financial year, a new accounting standard came into effect for superannuation entities (AASB 1056: *Superannuation Entities*), where applicable RSEs would recognise *employer-sponsor receivables* (for the first time). In effect, this means that the unfunded portion of a fund's liabilities is recognised as an asset.

The RSEs most affected by the new accounting standard are public sector superannuation entities. From June 2016 to June 2017, total assets of all (APRA-regulated) public sector funds increased by just over 50 per cent. For an affected RSE, an increase in assets (as a result of the new accounting standard) would also be reflected in an increase in *net assets available for members' benefits* (the metric used in the levy formula).

The APRA levies for 2018-19 do not incorporate the effect of the new accounting standard – that is, *employer-sponsor receivables* are excluded from the levy base for the calculation of entities' levies for 2018-19. This treatment is in line with the outcome of a recent Treasury review, which concluded that shifting the burden of the levy toward public sector superannuation funds should not occur without due consideration and consultation.³

ASFA understands that the methodology for the AFCA interim funding model (for superannuation trustee members) also does not incorporate the effect of the new accounting standard. ASFA considers that if the methodology for the APRA levies were to be adjusted (to take account of the new standard), the methodology for the AFCA levies should be similarly adjusted.

Levy invoicing

Levies for superannuation trustee members will be invoiced at the trustee level, rather than at the RSE level (which is the case for the APRA levies).

For the superannuation industry, there are benefits of the latter approach. Some trustees have multiple RSEs. If levies are invoiced at the trustee level, then trustees with multiple RSEs have to apportion their total levy amount between their RSEs.

³ APRA 2018, *Cost Recovery Implementation Statement: Prudential Regulation of Financial Institutions*, 6 July, page 4 (https://www.apra.gov.au/sites/default/files/apra_cris_2018-19.pdf).

For trustees that have multiple RSEs, ASFA considers that the levy invoice should provide the total trustee-level levy, but also a break-down of the levy with respect to each RSE. The additional cost to AFCA is unlikely to be material.

With respect to the frequency of invoicing (that is, annually, bi-annually or quarterly), ASFA members have not expressed any particular preference.

3. Coverage of superannuation entities

With respect to AFCA's broader long-term funding arrangements, the ultimate aim is to develop a fully user-pays funding model. In this regard, a key design principle for the long-term funding model is to ensure appropriate coverage of entities in the financial system. This would help limit cross-subsidisation – between or within different sectors.

Ideally, this should also apply to the design of interim funding model. As a matter of principle, ASFA considers the interim funding model should capture all entities in relation to whom a superannuation complaint may be lodged with AFCA. In addition, this approach would support a measured transition to an appropriate long-term funding model.

Treatment of providers of Retirement Savings Accounts (RSAs)

Complaints in relation to the conduct or decisions of an RSA provider fall within the definition of a 'superannuation complaint' under new section 1053 of the *Corporations Act 2001*. Such complaints will therefore be within AFCA's superannuation jurisdiction, in the same way that they currently fall within the jurisdiction of the SCT.

However, RSAs are not issued within the trust framework associated with superannuation funds, pooled superannuation trusts and approved deposit funds. Rather, they are products issued by an authorised deposit-taking institution (ADI).

ASFA understands that RSA providers will not be subject to levies under the interim funding model for superannuation trustee members. Instead, RSA providers will pay separate AFCA membership levies in their capacity as ADIs.

The exclusion of RSA providers from contributing to levies for superannuation trustee members provides the potential for cross-subsidisation (in particular, where there is a complaint in respect of a RSA product). In this regard, AFCA could consider incorporating RSA providers into the interim levy regime for superannuation trustee members.

That said, ASFA acknowledges that complaints in relation to RSA products are likely to make up only a very small percentage of total superannuation complaints.

Treatment of small APRA funds

As is the case with the SCT, complaints in respect of Small APRA Funds (SAFs) would fall within the remit of AFCA. As of March 2018, there were 2,085 SAFs with total assets of \$2.2 billion.

ASFA understands that under the interim funding model SAFs will not pay levies as superannuation trustee members. Instead, SAFs will pay a general minimum membership levy. This arrangement is similar to arrangements under the APRA levy regime – where all SAFs pay the same flat fee (\$590 in 2018-19).

As is the case for RSA providers, the exclusion of SAFs from contributing to levies for superannuation trustee members provides the potential for cross-subsidisation.

AFCA could consider incorporating SAFs into the interim levy regime for superannuation trustee members. However, as is the case for RSA providers, complaints in relation to SAFs are likely to make up only a very small percentage of total superannuation complaints.

Treatment of exempt public sector superannuation schemes

Under the *Superannuation Industry (Supervision) Act 1993*, some public sector superannuation schemes are exempt from regulation (exempt public sector superannuation schemes). Exempt public sector superannuation schemes are, instead, subject to government supervision (that is, the Australian Government, state or territory governments) in accordance with the principles of the *Superannuation Industry (Supervision) Act 1993*.

Exempt public sector superannuation schemes are not required to become members of AFCA, but are free to do so. ASFA understands that trustees of exempt public sector superannuation schemes that are AFCA members would pay levies on the same basis as other superannuation trustee members. ASFA considers that this is appropriate.

4. Workflow modelling

ASFA has a number of comments regarding the workflow modelling with respect to superannuation complaints on page 30 of the Consultation Paper.

Terms of reference for AFCA

An assumption in the workflow modelling for AFCA is that 10 per cent of superannuation complaints will be deemed to be outside AFCA's Terms of Reference. In contrast, around 36 per cent of complaints received by the SCT are deemed to be outside its jurisdiction.⁴

ASFA understands that part of the difference between these figures reflects the differing treatment of complaints that have not been lodged for internal dispute resolution (IDR).

- The SCT does not have jurisdiction to deal with complaints where the complainant has not, before coming to the SCT, first lodged a complaint with the relevant fund or RSA provider via its internal complaints resolution arrangements or, with respect to complaints in relation to another relevant decision-maker, has not made all reasonable efforts to have the complaint resolved by that decision maker.⁵
- With respect to AFCA, ASFA understands that complaints which fall into this category are not necessarily deemed to be outside AFCA's Terms of Reference.

Based on our understanding of how the Financial Ombudsman Service operates currently, ASFA anticipates that there may be differences in the extensiveness of the AFCA Terms of Reference review and the SCT's jurisdiction assessment that may account for at least some of the differential in the above figures.

- In particular, we note that prior to accepting a complaint, the SCT undertakes a screening process that involves not only an assessment of whether the complaint is within any applicable time limits, but also whether it falls within any of the prescribed exclusions to its jurisdiction.

⁴ Superannuation Complaints Tribunal 2017, *Annual Report: 2016-17*.

⁵ Superannuation Complaints Tribunal 2017, *Annual Report: 2016-17*.

- In the absence of final Rules, Operational Guidelines and process detail for AFCA, it is not entirely clear whether all of these matters will be considered as part of a 'Terms of Reference review' by AFCA, or whether some will be considered at a later stage of the process.

Further clarity on these matters, and any other reasons for the differential in the estimates of complaints that will be concluded at the 'Terms of Reference review' stage for AFCA, as compared with the jurisdiction assessment stage for the SCT, would be appreciated.

Resolution of superannuation complaints at the 'referral back' stage

The Consultation Paper notes that the SCT "has advised that it anticipates that none of the superannuation complaints received by AFCA are likely to resolve at the registration and referral stage and that 100 per cent will progress to case management or for jurisdictional assessment".

ASFA considers that this might reflect a difference in interpretation of the 'referral' or 'referral back' process.

ASFA understands that there are, broadly, two different circumstances when a superannuation complaint received by AFCA might be 'referred back' to the trustee:

- (i) a complaint that has failed to resolve at the IDR stage may be referred back to the trustee for a *further* opportunity at IDR (this will not apply to complaints about payment of a superannuation death benefit)
- (ii) a complaint that has not previously been through the trustee's IDR process will be registered by AFCA, but will then be referred to the trustee – effectively for a *first* opportunity at IDR.

ASFA would tend to agree that it is unlikely that significant numbers of complaints falling within circumstance (i) would resolve on referral back, given they have already been through an extensive IDR process. However, it is possible that some small number of these complaints may resolve.

In contrast, we would anticipate that a higher resolution rate would be recorded for complaints falling within circumstance (ii), given these have not previously been through an IDR process.