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Committee Secretary
Senate Economics Legislation Committee
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Parliament House
Canberra ACT 2600

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Dear Committee Secretary

Inquiry into the *Treasury Laws Amendment (Putting Consumers First—Establishment of the Australian Financial Complaints Authority) Bill 2017*

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide the attached response to the Inquiry into the *Treasury Laws Amendment (Putting Consumers First—Establishment of the Australian Financial Complaints Authority) Bill 2017*.

If you have any queries or comments in relation to the content of our submission, please contact me on (02) 8079 0808 or by email gmccrea@superannuation.asn.au, or Julia Stannard, Senior Policy Adviser, on (03) 9225 4027 or jstannard@superannuation.asn.au.

Yours sincerely

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Inquiry into the Treasury Laws Amendment (Putting Consumers First—Establishment of the Australian Financial Complaints Authority) Bill 2017

A. 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 $2.3 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.

B. KEY POINTS

The introduction of a new framework for external dispute resolution (EDR), replacing the existing Superannuation Complaints Tribunal (SCT), Financial Ombudsman Service (FOS) and Credit and Investments Ombudsman (CIO), is a complex undertaking.

An earlier exposure draft version of the Bill had a number of deficiencies, lacking clarity in some respects and omitting many of the important protections for consumers and superannuation trustees that are embedded in the legislative framework for the SCT.

ASFA wishes to acknowledge the constructive dialogue that occurred as part of the consultation process, and the efforts made by Treasury staff to address industry's concerns. While not perfect, the resulting Bill is a significant improvement on the exposure draft version. In particular, ASFA welcomes the inclusion, in the Bill, of provisions:

- Confirming that no monetary limits will apply for superannuation complaints made to the AFCA scheme.
- Entrenching the 'claim-staking' rules that are vital to the effective and timely resolution of superannuation death benefit complaints.
- Confirming that the operator of the AFCA scheme must be operated on a non-for-profit basis.

ASFA's major remaining concerns relate to the commencement provisions for the new AFCA scheme and the wind-down arrangements for the SCT. These raise difficult issues that in ASFA's view require additional consideration. In particular:

- The Bill provides for flexibility in relation to the date from which the new AFCA scheme will commence to take complaints, however this comes at the expense of providing stakeholders with the certainty they need in order to prepare for the new arrangements. ASFA considers it preferable that the Bill nominates a specific commencement date – no earlier than 1 January 2019 – or provides at least six months' notice ahead of any milestone in the transition process.
- The potential of a four year wind-down period for the SCT, operating parallel to the new AFCA scheme, raises significant questions about the funding burden that the APRA-regulated superannuation sector should reasonably be expected to bear. Any outcome that involves the sector continuing to fund the SCT (through the annual APRA supervisory levy) for more than two years, whilst also directly funding AFCA, is unacceptable. ASFA considers that alternative funding and/or wind-down arrangements for the SCT should be considered.

- The transition to the new dispute resolution framework will be significantly more complex for APRA-regulated superannuation than for other sectors of the industry. Given the genuine risk that issues will emerge during the transition phase, the effectiveness of the arrangements for superannuation should be formally reviewed after 12 months of operation.
- A number of additional issues arising from the transition arrangements for the AFCA scheme and the wind-down arrangements for the Superannuation Complaints Tribunal (SCT) will need to be addressed. These include:
  - aligning the start of the SCT's wind-down and its closure to new complaints with the commencement of the AFCA scheme;
  - alleviating the confusion that consumers will experience with four external dispute resolution schemes existing for a period of up to 12 months
  - limiting the scope to withdraw a complaint from the SCT and re-commence it with the AFCA scheme to those complaints the SCT had not yet commenced to consider.
- There is an urgent need for further detail to be provided in relation to the AFCA scheme, in particular its proposed terms of reference and funding model.
- The Bill should provide greater certainty regarding the commencement date for proposed new internal dispute resolution requirements. Given the significant implementation effort that will be required, ASIC should urgently commence consultation on the proposed requirements.

C. GENERAL COMMENTS

This submission, in response to the *Treasury Laws Amendment (Putting Consumers First - Establishment of the Australian Financial Complaints Authority) Bill 2017* (the AFCA Bill), builds upon ASFA's:

- submission to Treasury dated 20 June 2017, in response to the exposure draft *Treasury Laws Amendment (External Dispute Resolution) Bill 2017* (the predecessor to the AFCA Bill)[1]; and
- submissions dated 7 October 2016 and 27 January 2017, in response to the issues paper and interim report issued by the *Review of the financial system EDR framework* chaired by Professor Ian Ramsay (the Ramsay Review)[2].

We note that the proposed AFCA scheme is intended to be the sole EDR scheme for all financial services complaints – replacing the SCT, FOS and CIO.

This submission is primarily focussed on the experience of members, beneficiaries and trustees of APRA-regulated superannuation funds. While many APRA-regulated superannuation funds are also members of FOS, the SCT is their primary EDR scheme and interactions with the FOS are typically focused on issues of advice.

C.1 The SCT remains the preferred EDR scheme for superannuation

While recognising the policy intent behind moving toward a 'one stop shop' approach to external dispute resolution (EDR) for the financial services industry, ASFA remains of the view that the SCT is the preferred model for superannuation complaints resolution.

Our strong support for the retention of the SCT as the specialist complaints body for the APRA-regulated superannuation industry was expressed in our previous submissions to Treasury and the Ramsay Review during the development of the proposed new EDR framework.

ASFA does not consider the SCT model to be 'broken'. In our view, the SCT has, within its historic and current funding and operational constraints, served the industry and consumers well.

ASFA has for many years called for an improvement in the SCT's funding levels. Our submissions to the Ramsay Review also highlighted the need to improve the SCT's operations and performance, via adequate funding and resourcing and enhancements to its governance structure and operating procedures. We also expressed our concerns that key protections for consumers and fund trustees, along with critical experience and expertise, may be lost if handling of superannuation complaints is moved to an EDR body with a generic (that is, not superannuation-specific) operating model. We direct Treasury's attention to those submissions.

While disappointed that the Government has elected to move to a generic model for complaints handling, ASFA intends to remain an active contributor to the consultation process, with a view to mitigating any adverse outcomes for superannuation trustees, members and beneficiaries that may flow from transition to the new EDR framework.

C.2 Funding the SCT wind-down important but must avoid unreasonable cost burden

The AFCA Bill provides for a wind-down period for the SCT of up to four years[3].

ASFA acknowledges the need for a wind-down period to allow the SCT to clear its caseload, as any potential transfer of complaints from the SCT to the AFCA scheme is subject to a number of complexities. These include the different legal attributes of the SCT (a statutory tribunal) and the AFCA scheme (an industry-based ombudsman), the differences in their processes, and consent provisions in the *Superannuation (Resolution of Complaints) Act 1993* (S(ROC) Act) which mean it will not always be possible to 'transfer' material relating to a complaint from the SCT to the AFCA scheme (refer D.2.3 for further comments on this matter). A wind-down period is also necessary to allow the SCT deal with any matters that may have been suspended due to court action, or are referred back from the Federal Court on appeal.

However, the extension of the wind-down period from two years (as proposed in the explanatory material accompanying the exposure draft Bill) to a maximum of four years raises significant questions about how the wind-down should be funded.

It is clear from the AFCA Bill[4] and the Treasury fact sheet[5] issued on introduction of the Bill that the superannuation sector will be required to contribute to the funding of the AFCA scheme, although the detail of the specific funding model has not yet been developed. However, the AFCA Bill and the accompanying materials are silent as to the funding of the SCT during its wind-down period.

ASFA has, in numerous submissions over the years[6], highlighted the chronic underfunding of the SCT that has led to the resourcing and performance issues highlighted by the Ramsay Review. In our previous submission to Treasury we noted the need to ensure the SCT is provided with adequate funding to ensure an orderly closure of its existing caseload.

We note that while the effort associated with caseload management may reduce in the later stages of the wind-down period, this is likely to be offset by a ramping up of other activity associated with the physical closure of the SCT, including archiving of records.

Overall, ASFA understands that the SCT may require an ***increase*** over its current level of operational funding in order to complete its caseload and close-down activities in an efficient manner. We understand the SCT has undertaken a modelling exercise to ascertain its funding and resourcing needs for the wind-down period[7], and we strongly urge Treasury, APRA and ASIC to take the output of this modelling into account in finalising the SCT's funding for its remaining years of operation.

In its submission to Treasury in response to the exposure draft Bill, the SCT specifically indicated that its present resourcing situation was inadequate to facilitate completion of its existing caseload by 30 June 2020 (the initial proposed closing date for the SCT):

> *The 2017-18 budget did not provide resourcing to enable the SCT to resolve existing complaints by 30 June 2020. Based on the SCT budget currently advised by ASIC for 2017-18, indicative early modelling suggest that open complaints at the SCT will not be finalised until December 2022. This scenario is untenable.*[8]

The SCT is currently completely funded by the APRA-regulated superannuation sector via an allocation from the annual financial institutions supervisory levy (APRA levy). While the amount of the allocation is not specifically disclosed, the 2017-18 Budget papers suggest that funding for the SCT will be reduced to $5.2 million in 2017-18, and will remain at this level in each of the two subsequent years.[9]

If maintained at that level, this could mean the superannuation sector would incur costs to operate the SCT, throughout the four-year wind-down period, of around $20.8 million, while funds are simultaneously incurring significant direct funding costs for the establishment and ongoing operations of AFCA and substantial costs to implement the new EDR framework. This is, in ASFA's view, unacceptable given the flow-on impact it will have on members' retirement incomes.

In ASFA's view, it would be unreasonable to require the APRA-regulated superannuation sector to fund the SCT, through the APRA supervisory levy, for more than two years following the date the new AFCA scheme commences to take superannuation complaints.

ASFA considers it may be necessary to reconsider the wind-down and/or funding arrangements for the SCT, to balance the cost impact on the superannuation sector (and indirectly on fund members) on the one hand, against the potential impact on consumers who have the right to expect an efficient resolution of their complaint. This may require a preparedness to consider a range of potential solutions, including:

- funding all, or part, of a four year SCT wind-down period from consolidated revenue;
- providing a significant increase in funding to the SCT over a shorter wind-down period to expedite the close-out of its caseload;
- a deemed withdrawal of all complaints that had, at the commencement of the AFCA scheme, been received by the SCT but not yet commenced – these complaints could then be provided with priority listing with the AFCA scheme;
- closing the SCT to new complaints prior to the date on which the AFCA scheme begins to take complaints – again, with these complaints given priority listing with the AFCA scheme. This may be necessary in order to curtail the growth in the SCT's caseload and avoid further prolonging the wind-down period.

It is critical that the SCT is provided with urgent confirmation in relation to its funding level during the wind-down period, and access to that funding. If the wind-down period is to be minimised, it is important to ensure the SCT has full visibility over its budgetary situation and can quickly engage additional resources where needed.

ASFA considers that any outcome that involves the sector continuing to fund the SCT (through the annual APRA supervisory levy) for more than two years, whilst also directly funding AFCA, is unacceptable.

ASFA recommends that:

- Alternative funding and/or wind-down arrangements for the SCT are considered, to avoid imposing an unreasonable cost burden on the superannuation sector (and indirectly on fund members) whilst providing the SCT with adequate funding to facilitate an efficient and orderly close-out of its caseload.
- The SCT is provided with urgent confirmation regarding its funding level for the wind-down period - and access to that funding – so it may immediately commence the processes necessary to increase its resourcing.

C.3 Effectiveness of AFCA model for superannuation should be reviewed after 12 months

The current legislative framework for the SCT includes a number of provisions that act as important protections for consumers and superannuation trustees. The exposure draft version of the Bill omitted several of these provisions, and left them to be addressed in the AFCA scheme's terms of reference – a position that ASFA considered unacceptable.

ASFA wishes to acknowledge the constructive dialogue that occurred in response to submissions on the exposure draft Bill, and the efforts made to address industry's concerns in this respect. In particular, ASFA welcomes the inclusion, in the AFCA Bill, of provisions:

- Confirming that no monetary limits will apply for superannuation complaints made to the AFCA scheme – that is, no limit may be imposed on the value of the claim made, or the value of the remedies that may be determined, under the AFCA scheme.[10]

- Entrenching the 'claim-staking' rules for superannuation death benefit complaints that enable a trustee to act with a degree of certainty when paying a death benefit to beneficiaries, and avoid unnecessary delays.[11]
- Confirming that the operator of the AFCA scheme must be operated on a non-for-profit basis.

It is important to note that the proposed EDR reforms will not impact uniformly across the financial services industry. Many financial firms will simply transition from membership of one industry-based ombudsman scheme - FOS or the CIO – to another industry ombudsman, the new AFCA scheme. These firms will effectively move from being bound under one set of contractually based terms of reference to another. While there will be differences of process and detail, it is expected that FOS, the CIO and the AFCA scheme will be broadly comparable schemes. The transition from membership of FOS or the CIO to the AFCA scheme should, in theory, be relatively seamless.

The transition experience for the APRA-regulated superannuation sector will be much less straightforward. The superannuation sector will move from the SCT, a statutory tribunal, to a new model - a hybrid industry ombudsman that has some particular legislative powers it may use only when dealing with superannuation complaints, but is otherwise largely governed by what are effectively contractually-based terms of reference. ASFA is not aware of any similar model applying to financial services internationally.

As well as the AFCA Bill and the proposed terms of reference, it must also be noted that superannuation trustees are already subject to multi-layered obligations imposed by the extensive legislative and prudential regulatory framework for superannuation and the more general duties imposed by trust law.

Industry has had only a relatively short period to review and consider the exposure draft Bill (released in mid-May) and now the AFCA Bill (introduced into the Senate on 14 September). This review has been conducted without access to detail about the content of the proposed terms of reference for the AFCA scheme, which will comprise a significant element of the new EDR framework (refer C.4 on this point).

There is accordingly a genuine risk that, with further time, issues will be identified relating to the interplay between the legislation and the terms of reference, and trustees' other legal and regulatory obligations. These issues may impact the effectiveness of the AFCA scheme as the EDR scheme for superannuation.

Superannuation is a largely compulsory product. It is held on a long-term basis, and is the largest financial asset many Australians hold at retirement. These features distinguish superannuation from other financial products and create a moral imperative to ensure the EDR arrangements for superannuation operate effectively and promote consumer confidence.

It is, in ASFA's view, critical that the effectiveness of the hybrid EDR model for APRA-regulated superannuation is actively monitored and formally reviewed, to ensure it achieves appropriate outcomes. We consider it appropriate that this occur, as part of a formal process, once AFCA has operated as the EDR scheme for new superannuation complaints for a period of 12 months.

Where deficiencies are identified, these should be promptly addressed.

ASFA recommends that the AFCA Bill is amended to require a formal assessment to be undertaken of the effectiveness of the AFCA scheme as the EDR Body for APRA-regulated superannuation, 12 months after the AFCA scheme commences taking superannuation complaints.

C.4 Detail of the AFCA scheme - urgent clarification needed

ASFA welcomes the additional detail in relation to the proposed arrangements for AFCA, set out in the Treasury fact sheet[12] issued upon introduction of the Bill. In particular, we welcome:

- The acknowledgement that AFCA will be required to adhere to industry practice corporate governance principles.
- The confirmation that the ***initial*** Board for AFCA will have at least one director with superannuation experience and expertise.

  ASFA's previous submissions have stressed the need to ensure the special attributes of superannuation are adequately reflected in the governance and operational arrangements for the AFCA scheme. As a result, we consider that representation of the superannuation sector on the AFCA Board will be required on an *ongoing* basis.
- The confirmation that the terms of reference of the AFCA scheme will set out exclusions from its jurisdiction, which are *expected* to include:
  - disputes already heard by an existing EDR scheme or by a court; and
  - superannuation complaints that relate to the management of the fund as a whole.

  These are both matters raised as concerns in ASFA's previous submission to Treasury. The fact sheet expresses merely an *expectation* that these will be addressed in the terms of reference, and notes that exclusions from AFCA's jurisdiction are "a matter to be further considered by the AFCA transition team".

  In ASFA's view, it is ***imperative*** that an exclusion from jurisdiction for each of these matters is included in the AFCA scheme's terms of reference:

  - Allowing a complainant to raise a dispute with the AFCA for a matter that has already been considered by an existing EDR scheme (for example, the SCT) or a court would be tantamount to allowing a 'double bite' at EDR for the same facts and subject matter, as well as duplicating the workload and cost associated with EDR.
  - The current exclusion from the SCT's jurisdiction for complaints that relate to the management of the fund as a whole[13] is important as it ensures trustees are able to make operational decisions about the fund overall without concern that they may be open to challenge by individual members. In this respect, it is important to note that trustees are subject to extensive statutory and fiduciary duties, as well as prudential regulation. These legal duties and obligations govern many of the operational decisions they make, and require them to act in the best interests of the overall membership of the fund.

  The terms of reference will also need to include other exclusions from the AFCA scheme's jurisdiction - for example, exclusions for complaints that have not been considered by the superannuation trustee as part of its IDR processes (currently excluded from the SCT's jurisdiction by section 19 of the S(ROC) Act).

Despite the clarification provided by the fact sheet, we note that significant information about AFCA, and the AFCA scheme, remains unclear at this time.

The exposure draft Bill released in May, and the AFCA Bill itself, set out a high-level framework of organisational, operational and compliance requirements for AFCA and the AFCA scheme. Significant detail about governance and operational arrangements and, critically, the proposed funding model, will be developed by the AFCA Transition Team and, largely, set out in the terms of reference for the AFCA scheme and the constitutional documents for the AFCA corporate entity (the AFCA scheme operator).

Our submission to Treasury on the exposure draft Bill highlighted the difficulties the industry has faced in endeavouring to properly assess the impacts of the proposed EDR framework without access to these documents. While we acknowledge the recent formation of the AFCA Transition Team, and the appointment of an expert reference panel to assist them, there has been no indication as to when further detail will be available. ASFA has indicated to the Transition Team the need to ensure industry is provided with a draft of the terms of reference for the AFCA scheme, for consultation, well in advance of the proposed commencement date.

As noted at C.3 above, the new EDR arrangements will impact APRA-regulated superannuation more heavily than other sectors of the financial services industry, as it moves from a statutory EDR scheme (the SCT) to one that combines contractual terms of reference with specific legislative provisions (AFCA).

It is important that the sector is given adequate time to consider the potential interplay between all of the relevant obligations that will apply to trustees – including the legislative provisions set out in the AFCA Bill and the terms of reference for the AFCA scheme, the existing legislative and prudential regulatory framework for superannuation and the more general duties imposed by trust law. Time will be needed to ensure that any gaps or inconsistencies may be addressed, before the AFCA scheme begins to take superannuation complaints. ASFA looks forward to participating in that process.

While not wishing to pre-empt the detailed consultation process on the terms of reference and other framework material for AFCA, ASFA notes that critical matters that must be addressed include:

- The funding arrangements for AFCA. It is clear from the AFCA Bill[14] and the Treasury fact sheet that AFCA will be industry funded, but no information has been provided to indicate how that funding will be determined.

  ASFA considers it absolutely critical to ensure that clear mechanisms are in place to avoid any cross-subsidisation between sectors – it is important that APRA-regulated superannuation monies are not used to directly or indirectly subsidise the cost of handling complaints that arise in other sectors. It is also important to ensure that there is transparency and accountability over the funding provided by the industry.

- Ongoing arrangements for appointment of directors to the Board (noting the AFCA Bill permits the Minister to appoint a minority of the initial Board, including the chair, within six months after the authorisation of the AFCA scheme[15]). This will need to include: the number of directors to be appointed and the process for their appointment, how sectoral representation across the financial services industry will be maintained, and pre-requisites in terms of experience and/or expertise.

- How the terms of reference will be settled, including the process for consultation and approval by financial firms required to be members of AFCA and processes for determining when a change to the terms of reference is 'material' and ensuring material changes are approved by ASIC[16].

- How the staffing of AFCA is to be determined and, in particular, how it will be ensured that adequate superannuation expertise and experience is available to deal with superannuation complaints – ASFA has recommended that a superannuation-specific stream is established within AFCA to serve as a repository of superannuation experience and expertise.
- The role of the independent assessor[17]. The independent assessment process represents a potentially significant new development for superannuation complaints, and further clarity is required as to the intended operation of this role.
- Clarification of the treatment of complaints relating to insurance within superannuation, where the consumer initially (mistakenly) brought a complaint against the insurer rather than the fund trustee.

  The AFCA Bill provides that one operational requirement of the AFCA scheme is that it will have unlimited monetary jurisdiction for 'superannuation complaints'[18]. The scheme will also have important powers that it may exercise only when dealing with 'superannuation complaints'[19]. A consumer who is dissatisfied with a determination made by AFCA will have the right to appeal to the Federal Court only where the determination was in respect of a 'superannuation complaint'. As a result, it is likely that a consumer's EDR experience and outcome will differ significantly depending on whether or not a matter is categorised as a 'superannuation complaint'.

  Many consumers have insured benefits within their superannuation – for example, insured death and/or total and permanent disability benefits that are funded by a group insurance policy held by the superannuation fund trustee. These insured benefits may form a significant component of a member's overall superannuation interest. The AFCA Bill duly recognises that any complaints in relation to these benefits can be treated as 'superannuation complaints', and provides the AFCA scheme with the power to join an insurer to a superannuation complaint[20].

  We note, however, that on occasions, a consumer may initially seek to bring a complaint against the insurer rather than against the trustee, as 'owner' of the policy. Currently such instances are resolved through discussions between the consumer and their fund trustee, or by identification of the issue once it reaches EDR (for example, FOS may inform the consumer that the complaint is more appropriately made to the trustee, and then, if dissatisfaction remains, to the SCT).

  ASFA is concerned that, under the proposed new EDR framework, complaints that are not correctly identified as 'superannuation complaints' at the outset may not receive the appropriate treatment. In particular, we note that there does not appear to be any scope, within the terms of the AFCA Bill, for the complaint to be withdrawn and recommenced as a 'superannuation complaint'. This will need to be clearly addressed in the terms of reference for the AFCA scheme.

ASFA's submission to Treasury on the exposure draft Bill contains more detail on these matters.

ASFA recommends that further clarity regarding the establishment, structure, governance, funding arrangements and terms of reference for AFCA be released as a matter of urgency.

D. SPECIFIC COMMENTS

D.1 Commencement of AFCA – greater certainty needed

When considering an appropriate start date for AFCA, it is critical to strike a balance between allowing the time needed for a measured implementation, and providing industry with adequate certainty of the timeframe they must work toward.

ASFA is concerned that the AFCA Bill provides flexibility but no certainty, and this will significantly impede the efforts of stakeholders to prepare for the new EDR arrangements.

D.1.1 The workload for stakeholders is significant and will require time and notice

As outlined in our previous submissions to Treasury and the Ramsay Review, it is clear that substantial effort will be required to create the new EDR scheme and prepare it for operation. Impacted stakeholders will include the AFCA Transition Team and (once installed) the AFCA Board and staff, ASIC, all financial firms that are required to become members of AFCA, and the three existing EDR schemes – the SCT, FOS and CIO. As noted above, these impacts will be felt more severely by the APRA-regulated superannuation sector than by other sectors of the financial services industry.

The regulatory and governance framework that must be created for the new dispute resolution framework is considerable, and will include:

- passage of the AFCA Bill and the making of associated regulations;
- incorporation of the AFCA corporate entity, appointment of its Board and engagement of staff;
- development and finalisation of the terms of reference for AFCA and establishment of its operating processes;
- development of a funding model;
- authorisation of the AFCA scheme by the Minister;
- development and finalisation of regulatory guidance by ASIC;
- implementation of transition and wind-down processes by the existing EDR schemes – the SCT, FOS and the CIO.

In addition, there will be significant implementation impacts on APRA-regulated superannuation funds including, but not limited to:

- updating regulated disclosure documents such as Product Disclosure Statements and periodic statement templates;
- issuing a prescribed 'significant event notification' under section 1017B of the *Corporations Act 2001;*
- substantial changes to the funds' internal processes for management of complaints that have gone to EDR, to reflect the operating processes adopted by the AFCA scheme;
- revision of all member communication materials where EDR is mentioned – including websites and a potentially large volume of letter templates;

- additional operating costs associated with maintaining processes, staffing and disclosure documents reflecting the existence of multiple EDR schemes during the transition phase.

The completion of this workload will involve a significant investment of effort and time by trustees, with many steps unable to be completed - or even commenced - without clarity as to the commencement date of the new EDR arrangements.

Taking all of this into account, ASFA's submission on the exposure draft Bill questioned whether the proposed commencement date of 1 July 2018 for AFCA was realistic, and cautioned against a rushed implementation that may lead to adverse outcomes for consumers and financial firms.

ASFA considers that a measured commencement date would be no earlier than 1 January 2019, reflecting the need to allow adequate time for passage of the legislation, consultation and finalisation of the terms of reference for the AFCA scheme and the ASIC regulatory requirements, and all necessary establishment activities.

The AFCA Bill seeks to address concerns about the achievability of a 1 July 2018 start date by providing the Minister with considerable flexibility to nominate specific dates in the transition process and the commencement of the AFCA scheme. In ASFA's view, this flexibility is of such an extent that stakeholders now have little clarity regarding the timeline that they must work toward. Our concerns are noted in sections D.1.2 below.

D.1.2 It is now unclear when new superannuation complaints will go to AFCA

The press release[21] issued by the Minister, upon introduction of the AFCA Bill, indicates that the AFCA scheme will commence on 1 July 2018, as originally proposed, and will take all new superannuation complaints from that date.

This is not, however, reflected in the AFCA Bill and the accompanying Explanatory Memorandum.

In contrast, those materials provide for flexibility around the commencement date for the AFCA scheme that was not present in the exposure draft of the Bill released in May. While we certainly welcome a level of flexibility, we are concerned that it has come at the expense of providing certainty to stakeholders.

The AFCA Bill does not set a specific start date for the AFCA scheme. Instead, it sets out a multi-faceted and complex process under which:

- the Minster will authorise the commencement of the AFCA scheme, from a specific date, by notifiable instrument;[22]
- the Minister may specify, by notifiable instrument, a date from which membership of AFCA will become mandatory for financial firms including trustees of regulated superannuation funds;[23]
    - if no date is specified membership will become mandatory 12 months after the day on which authorisation of the AFCA scheme comes into force;[24]
    - financial firms that are required to be members of FOS or the CIO must continue their membership for a transitional period of up to 12 months from the day on which AFCA membership is mandatory;[25]

- the Minister will, by notifiable instrument, specify the date from which no new superannuation complaints may be accepted by the SCT[26]. According to the Explanatory Memorandum, this is *expected* to be the same day the AFCA scheme begins receiving complaints.[27]

The Explanatory Memorandum notes that this process is designed to provide "flexibility to ensure the Minister can be satisfied that appropriate operational arrangements are in place to enable the AFCA scheme to deal with new complaints starting from this date, before closing off the opportunity for consumers to bring complaints to the SCT"[28].

ASFA is supportive of the intent to provide some flexibility that underlies the process outlined above – it is critical to ensure the AFCA scheme is equipped and ready to commence hearing superannuation complaints before removing access to the SCT.

However, the provision of flexibility must be executed in a way that provides industry with certainty as to the milestones and deadlines it must work toward. It is simply not possible for trustees to determine, from the process outlined above, the date from which new superannuation complaints will go to AFCA rather than the SCT.

This lack of certainty will significantly impede trustees' ability to prepare for the new EDR arrangements. ASFA's preference is that certainty be provided in relation to the commencement date. As noted at D.1.1, we consider that a date no earlier than 1 January 2019 would represent a more measured and achievable commencement date for the AFCA scheme than 1 July 2018.

Alternatively, if the current level of flexibility is to be retained, ASFA considers that the AFCA Bill should be amended to require that at least six months' notice is given of any milestone toward full implementation of the new EDR framework.

ASFA recommends that the AFCA Bill be amended to provide a specific commencement date for the new EDR arrangements, no earlier than 1 January 2019.

Alternatively ASFA recommends that the AFCA Bill be amended to require that at least six months' notice must be provided by any notifiable instrument specifying the date from which:

- AFCA is authorised as an EDR scheme;
- membership of AFCA is mandatory for financial firms; and/or
- new superannuation complaints will be handled by AFCA.

D.1.3 Existence of multiple EDR bodies during transition period likely to cause confusion

The proposed new EDR framework has, from the outset, included a transition period during which new superannuation complaints would go to the AFCA scheme and the SCT would continue in operation to close out its existing caseload.

This is necessary given the AFCA scheme and the SCT are very different in nature (an industry ombudsman as opposed to as statutory tribunal), and there are complexities that make it impracticable to simply transfer existing complaints to the AFCA scheme. It will, however, cause confusion for consumers and involve duplication of effort and cost for the industry (refer C.2 above regarding ASFA's concerns about the funding of the SCT during what is now proposed to be a potential four year wind-down period).

Unlike the exposure draft Bill, the AFCA Bill now includes a requirement that financial firms who are required to be a member of FOS or the CIO maintain that membership for a period of up to 12 months[29].

This raises the prospect that there may now be **four** financial services EDR schemes in existence for up to 12 months after the authorisation of the AFCA scheme. Each scheme will have their own governing statute or terms or reference and their own operating processes and expectations on the financial firms who are members (in the case of the AFCA scheme, FOS and the CIO), or subject to their jurisdiction (in the case of the SCT).

This stands in sharp contrast with the stated intent of the reforms – to streamline EDR arrangements and reduce consumer confusion, by implementing a 'one stop shop'.

During this initial transition period, financial firms will need to be prepared to manage complaints through - and make members/customers aware of - all relevant EDR schemes. As many superannuation trustees are members of FOS[30], the arrangements proposed by the AFCA Bill would see trustees potentially needing to manage processes for - and communicate to members about - three EDR schemes (AFCA, the SCT and FOS) for a period of up to 12 months, then two EDR schemes (AFCA and the SCT) for a further, unclear, period until the SCT winds down.

As well as creating confusion, the existence of four EDR schemes will involve:

- significant duplication of effort;
- the potential for inconsistent outcomes to arise in factually similar complaints;
- increased compliance and funding costs to be borne by the industry; and
- increased competition for resources amongst the EDR schemes.

This could in ASFA's view be alleviated if, as recommended at D.1.2, the Bill nominated a specific date from which the AFCA scheme will commence to take complaints.

The messaging adopted by all stakeholders during the transition period will be critical to reducing the confusion that consumers will experience. We note that ASIC was the regulator that authorised FOS and the CIO as EDR schemes and will have significant powers of oversight in relation to the AFCA scheme. In ASFA's view, ASIC will have a key role to play in clearly communicating to consumers about the transition and the relevant EDR schemes at any given point in time, including through its MoneySmart website.

D.2 Wind-down of SCT – transitional matters

In addition to concerns about the funding of the SCT (refer C.2 above), the wind-down period of up to four years raises a number of additional issues, as highlighted below.

D.2.1 Key dates for SCT and AFCA scheme should be aligned

The commencement of the wind-down period is tied to the date on which the legislation receives Royal Assent. While the date on which the AFCA scheme will commence to take new superannuation complaints is presently unclear (refer D.1.2 above), it will almost certainly be some time *after* the legislation has received Royal Assent. In this intervening period, the SCT will continue to be the sole EDR scheme for complaints in relation to APRA-regulated superannuation, its caseload will continue to increase, and complaints may continue to be appealed to the Federal Court.

ASFA considers that the potential wind-down period specified in the legislation should be timed from the date the AFCA scheme has commenced to take new superannuation complaints.

It should also be noted that the Minister may effectively shorten the wind-down period for the SCT, by proclaiming an earlier date for the commencement of provisions repealing the S(ROC) Act[31]. We note that the closure of the SCT is an event that superannuation trustees will need to communicate to their members, therefore it is important that they receive adequate prior notice – we recommend no less than three months.

ASFA recommends that:

- the wind-down period for the SCT should be timed from the date the AFCA scheme commences to take new superannuation complaints.
- a minimum three months' notice is given in the event that the minister chooses to proclaim an earlier closing date for the SCT.

ASFA welcomes the indication of an intention that no new complaints will be able to be made to the SCT from the date the AFCA scheme begins to receive complaints[32]. This addresses one of ASFA's concerns in relation to the exposure draft Bill, which allowed new complaints to be lodged with *either* the SCT or the AFCA scheme, for up to six months after the commencement of the AFCA scheme. ASFA firmly believes that in order to achieve an efficient and orderly close down of the SCT, it is necessary to set a clear date from which it will cease to receive complaints.

However, while the Explanatory Memorandum draws a nexus between AFCA opening for complaints and the SCT closing to new complaints, this is not evident from the AFCA Bill itself. Further, as noted at D.1.2 above, the date at which the AFCA scheme will begin to take complaints is presently quite unclear. ASFA recommends that additional clarification be provided, to provide certainty to all stakeholders.

ASFA recommends that the AFCA Bill is amended to clearly reflect the closure of the SCT to new complaints from the date the AFCA scheme begins to receive superannuation complaints.

D.2.2 Additional flexibility to facilitate an efficient wind down is welcome

ASFA welcomes the additional flexibility to be provided to the SCT during its wind-down phase, to provide the Chair with an ability to delegate any or all of their powers and functions to other members of the Tribunal.

We also support the relaxation of requirements relating to the engagement of staff. As it is likely the SCT will face challenges hiring and retaining staff during the wind-down period, the removal of the requirement that SCT staff be engaged under the *Public Service Act 1999* is sensible and measured.

ASFA also considers it appropriate that these amendments commence immediately upon the legislation receiving Royal Assent.

D.2.3 Ability to withdraw a complaint from SCT and progress it via AFCA is problematic

The Explanatory Memorandum[33] indicates that where the SCT has not made a final determination of a complaint, the complainant may choose to continue to progress it with the SCT or withdraw it and instead progress it via a complaint to the AFCA scheme.

This ability to effectively re-start a complaint with the AFCA scheme raises a number of complex considerations.

In particular, we note that:

- Any concept of 'transferring' a complaint from the SCT (a statutory tribunal) and the new AFCA scheme (an ombudsman) must be considered in the context of the very different legal attributes of the bodies and their different approaches to dispute resolution.
- The withdrawal of a complaint that the SCT had commenced to consider, and its re-commencement as a new complaint to the AFCA scheme, will involve duplication of effort and cost to industry. Depending on how far the complaint had progressed before the SCT, the duplication could be significant.
- The AFCA Bill does not propose any specific amendments that would facilitate the 'transfer' of a complaint from the SCT. We note that the S(ROC) Act currently permits the SCT to refer a complaint to another complaints handling body or court, where satisfied that it has the power to deal with the complaint and *all parties* to the complaint have provided their consent[34]. To the extent that a complaint is referred to another body, it is taken to have been withdrawn from the SCT.[35] Currently, referrals occur from the SCT to FOS on an infrequent basis. Under the new EDR arrangements, it will be necessary to establish mechanisms for the 'transfer' of material relating to a complaint from the SCT to the new AFCA scheme.

  The effectiveness of a 'transfer' mechanism as a means of reducing the SCT's caseload and expediting the transition to the AFCA scheme will, however, be impacted by one feature that is prevalent in complaints about superannuation as distinct from other types of financial products and services - superannuation complaints, especially those in relation to death benefits, may involve multiple parties.

  In such cases it is likely that one or more of the parties may prefer to continue the complaint before the SCT, while others may prefer to withdraw it and commence it afresh before the AFCA scheme. Given the consent requirements in the S(ROC) Act, a complaint could not, in these circumstances, be 'transferred' to the AFCA scheme. We note that complaints relating to death benefits represent a significant proportion of the SCT's caseload – for the 2015-16 financial year, 32 per cent of complaints within the SCT's jurisdiction related to death benefits.

- Even in matters involving a single complainant, the option to re-commence a complaint with a different decision-maker creates the potential for 'forum-shopping'. ASFA considers that this runs counter to good policy and the intent of the reforms to establish a single EDR scheme for the financial services industry.
- It will be necessary to ensure that there are no gaps in coverage where an individual finds that their complaint is no longer able to be dealt with by either the SCT or the AFCA scheme. For example, a person may withdraw a complaint from the SCT, intending to re-commence it before the AFCA scheme, but find that it is now outside any applicable time period imposed under the AFCA scheme's terms of reference. This may particularly be an issue in the latter stages of the SCT's wind-down period.

ASFA recommends that any ability to withdraw a complaint from the SCT and then commence a complaint dealing with identical facts and subject matter before the AFCA scheme is limited to those complaints that the SCT had not yet commenced to consider.

D.3 Other matters

D.3.1 No secrecy protection for information exchanged during EDR

The AFCA Bill contains no powers to protect the secrecy of documents or information exchanged during the review of a superannuation complaint by the AFCA scheme. This differs to the S(ROC) Act, which contains the following protections:

- The SCT has the power to give formal directions to any person present at a review meeting in relation to a complaint prohibiting or restricting the disclosure of documents or information relating to that material[36]. A financial penalty can be imposed where a person refuses or fails to comply with a direction of the SCT. In making any direction, the SCT is specifically required to have regard to the wishes of the parties in relation to the complaint and the need to protect their privacy.
- Unless the parties to a complaint otherwise agree, statements made during a conciliation conference are to be treated as privileged in a review meeting in relation to a complaint[37].

Sensitive information is frequently exchanged during the EDR process. In complaints where the distribution of a death benefit is under dispute, it is common for parties to make submissions that are inflammatory, or personal and/or private and of such a nature that the party may not wish for them to be documented. These submissions are often made in the context of family disputes, during an EDR process where the parties are unrepresented and unaware of the legal implications of their actions.

The potential that such material may become public is of concern to ASFA, as it is likely to further inflame the dispute resolution process. Further, an awareness that submissions may not be treated as confidential may discourage parties from speaking freely. This may impede efforts to resolve the dispute at conciliation, or prevent information being revealed that is relevant to the determination of the complaint.

While it is possible this is a matter intended to be covered in the terms of reference for the AFCA scheme, this may not provide adequate protection. In the absence of a specific statutory power, and a sanction where the secrecy of material is breached, it is not clear that the terms of reference can adequately bind the complainant and/or other parties to the complaint.

ASFA recommends that the AFCA Bill is amended to protect the secrecy of material exchanged during the EDR process.

D.3.2 Right of appeal against determinations

The AFCA Bill preserves the right of a party to appeal to the Federal Court against a determination of a superannuation complaint[38]. However, as the new EDR scheme will not be a statutory body, the parties will no longer have the ability to seek judicial review under section 5 of the *Administrative Decisions (Judicial Review) Act 1977* and section 39B of the *Judiciary Act 1903*.

Under the current complaints framework for superannuation, a party who considered that the SCT erred in ruling a complaint outside its jurisdiction, or disagreed with a decision by the SCT to treat a complaint as withdrawn, is able to seek judicial review. This could potentially be mirrored in the new framework by providing the parties to a complaint with a specific right of review of such decisions, for example by a panel within the AFCA scheme.

ASFA recommends that a complainant has access to some form of review in relation to a decision that a complaint is not a 'superannuation complaint', or is outside the AFCA scheme's jurisdiction.

D.3 Internal Dispute Resolution

The AFCA Bill provides ASIC with power to significantly reform the internal dispute resolution (IDR) arrangements for financial firms, including superannuation trustees.

These powers provide for ASIC to:

- specify, by legislative instrument, information that financial firms must give to ASIC regarding their IDR procedures and the operation of those procedures[39];
- publish the information given to ASIC under the legislative instrument (or information derived from that information), including information that relates to a particular financial firm or from which a particular financial firm may be identified[40]; and
- reframe the current specific IDR requirements for APRA-regulated superannuation funds to require compliance with more generalised IDR standards and requirements made or approved by ASIC[41].

Each of these amendments is proposed to commence the day after the AFCA Bill receives Royal Assent. Very little detail has been provided about the potential scope of these requirements.

ASFA's concerns in relation to these amendments were outlined in some detail in our submission to Treasury on the exposure draft Bill. In particular, we note that:

1. IDR for superannuation is generally more complex than IDR for other types of financial products, therefore a longer IDR period is warranted and should be retained. A 90 day IDR period currently applies for superannuation complaints, in contrast to the 45 day period that typically applies for complaints in relation to other types of financial products. This reflects:
    - the complexity of many superannuation complaints, often involving multiple parties (not simply the product holder and product issuer);
    - the need to obtain often detailed information required to assess particular types of complaints, which can involve:
        - for disability-related complaints - detailed specialist evidence from medical practitioners and also evidence from employers;

- for death benefit related complaints - medical evidence about the cause of death, as well as often extensive details establishing the claims of all potential beneficiaries (including their relationship to the deceased, and the extent of any financial dependence or interdependence).

Superannuation trustees, bound by fiduciary duties to act in the best interests of fund members, act with diligence when considering superannuation complaints and endeavour, where possible, to deal with them as promptly and efficiently as possible. The 90 day timeframe allowed under section 101 is understood to be the outer time limit, with trustees typically imposing internal service standards that work toward the resolution of most complaints well within that timeframe. Nonetheless, given the nature of superannuation, there will be exceptional and complex cases where 90 days may be required to undertake a full assessment of the complainant's case.

ASFA recommends that in moving from the specific superannuation IDR arrangements to a more generalised IDR regime, the IDR timeframe for superannuation complaints should remain at the current 90 days.

2. The AFCA Bill provides ASIC with unfettered powers to determine the nature and extent of the information to be reported about financial firms' IDR procedures, as the frequency of this reporting and the format and reporting channel to be adopted. The lack of detail, combined with a proposed commencement date tied to Royal Assent of the AFCA Bill, gives financial firms little certainty as to the scope of the reforms or the likely implementation timeframe.

   - The new IDR arrangements are likely to involve significant implementation effort by financial firms, and it is therefore important that the requirements are settled well in advance of their commencement date.
   - In order to deliver genuine transparency and comparability over IDR activity, any IDR reporting requirements will need to be extremely carefully framed. For example, it will be necessary to ensure that all providers are required to report using consistent definitions of 'complaint' or 'dispute' and that any 'materiality' thresholds that may be applied are clearly defined. It will also be important to avoid drawing comparisons between different types of providers that are subject to different requirements – for example, trustees of APRA-regulated superannuation funds should not be compared to other types of providers.

   In our previous submission to Treasury, ASFA recommended that:

   - the IDR reporting regime not commence prior to 1 July 2018 (the date that was then proposed for the commencement of the new dispute resolution framework); and
   - the first reporting date be no earlier than 30 September 2019, for the financial year ended 30 June 2019.

   The fixing of an appropriate commencement date for the IDR reporting requirements is impacted by:

   - the flexibility provided in the AFCA Bill in relation to the commencement of the new EDR framework, and the AFCA scheme; and
   - the fact that in the absence of final law, ASIC has not yet commenced a consultation process in relation to the detail of the reporting requirements.

It is imperative that the proposed reporting requirements are developed by ASIC in time to allow adequate consultation with stakeholders, to ensure the resulting data will be comparable and meaningful.

It is also important that the final requirements are in place well before the commencement of the first reporting period, to give financial firms time to implement the systems and processes that will be necessary to track IDR data and extract it for reporting purposes. If the requirements are not established until after the commencement of the reporting period, financial firms will be forced to undertake time consuming and resource intensive processes to 'back capture' the required data.

ASFA recommends that the AFCA Bill is amended to provide that the first IDR reporting period does not commence before:

- the date on which the AFCA scheme commences to take complaints; and
- six months after the registration of the legislative instrument establishing the detail of the reporting requirements.

ASFA further recommends that:

- ASIC's legislative instrument should not require financial firms to report IDR data more often than once per financial year, with the due date no earlier than three months after the end of the financial year.
- ASIC should immediately begin consultation on the content, format and method for reporting of IDR activity, to ensure that genuine transparency and comparability can be achieved and to minimise the compliance cost and burden on financial firms.

The Treasury fact sheet[42] issued upon introduction of the AFCA Bill confirms that one further recommendation of the Ramsay Review relating to IDR will be implemented – the AFCA scheme will refer all new complaints it receives back to the financial firm for a final opportunity to resolve the complaint at IDR.

As outlined in our submission to Treasury in relation to the exposure draft Bill, ASFA is not persuaded that this 'last chance IDR' process will be effective in relation to superannuation complaints. It will appreciably add to the IDR workload of trustees, by effectively re-opening complaints that had already been considered, but were unable to be resolved, during IDR initially. More significantly, we are concerned that it will serve only to frustrate a consumer who, having believed themselves to have completed the IDR process and now desiring resolution via EDR, finds themself returned to their financial services provider for further IDR.

ASFA does, however welcome the confirmation, in the Treasury fact sheet, that the last chance IDR process will not apply to superannuation complaints about death benefits.

Endnotes:

[1] ASFA, Submission to the Treasury: External Dispute Resolution and Complaints Framework

[2] ASFA, Response to Issues Paper: *Review of the Financial System External Dispute Resolution Framework*, 7 October 2016, ASFA, *Response to Interim Report: Review of the Financial System External Dispute Resolution and Complaints Framework*, 27 January 2017

[3] *Treasury Laws Amendment (putting Consumers First – Establishment of the Australian Financial Complaints Authority) Bill 2017* (AFCA Bill), item 8 of the commencement table

[4] AFCA Bill, schedule 1, item 2, proposed new subsection 1051(2)(b)

[5] Treasury Fact Sheet: The Australian Financial Complaints Authority (AFCA) - the Government's response to consultation, 14 September 2017

[6] Including annual pre-Budget submissions, annual submissions on the proposed financial institutions supervisory levy (the annual 'APRA levy', from which the SCT funding is allocated), our submissions to the Ramsay Review of the EDR framework, and our submission to Treasury on the exposure draft Bill.

[7] Ms Helen Davis, Chair of the Superannuation Complaints Tribunal - Senate Economics Legislation Committee Estimates, 31 May 2017. A response does not appear to have been tabled.

[8] Superannuation Complaints Tribunal: Submission in response to the Consultation Paper: Improving dispute resolution in the financial system, page 16

[9] The Australian Government 2017, *2017-18 Budget*, Budget Paper No. 2, page 162

[10] AFCA Bill, schedule 1, item 2, proposed new section 1051(4)(f). However this reference must be read together with the limits on the powers of the AFCA scheme, as set out in proposed new subsections 1055(4) and (5). Those subsections provide that where the AFCA scheme is satisfied that a decision-maker's conduct or decision is unfair and unreasonable (or both), it may only exercise its powers for the purpose of placing the complainant, as nearly as practicable, in such a position that the unreasonableness or unfairness (or both) no longer exists.

[11] The claim-staking rules set out a process under which a trustee:

- considers potential claims in relation to a deceased member's benefit
- makes a proposed decision as to payment of the benefit
- notifies interested persons of the proposed decision and a prescribed period within which they may object
- considers any objections raised within that period
- makes a final decision
- notifies interested persons of their ability to make a complaint in relation to that decision within a prescribed period.

In accordance with these rules a person may only make a complaint to the relevant EDR scheme (currently the SCT, in future, AFCA) if they objected to the trustee's decision within the prescribed period and lodged a complaint with the relevant EDR scheme within the prescribed period.

Once the prescribed period for making a complaint has elapsed, the trustee may proceed to pay the benefit, in accordance with its final decision, without further delay or fear that its decision may be challenged. The claim-staking rules accordingly provide considerable certainty to both trustees and beneficiaries and support the efficient but considered payment of death benefits.

The 'prescribed period' is 28 days under both the *Superannuation (Resolution of Complaints) Act 1993* and the AFCA Bill.

[12] Treasury Fact Sheet: The Australian Financial Complaints Authority (AFCA) - the Government's response to consultation, 14 September 2017

[13] *Superannuation (Resolution of Complaints) Act 1993*, subsection 14(6)

[14] AFCA Bill, schedule 1, item 2, proposed new subsection 1051(2)(b)

[15] AFCA Bill, schedule 1, item 2, proposed new subsection 1051(3)(e)

[16] AFCA Bill, schedule 1, item 2, proposed new subsection 1051(5)(b) and section 1052D require ASIC approval of 'material' changes to the AFCA terms of reference, but provide no clarification of when a change will, or will not, be considered 'material'

[17] AFCA Bill, schedule 1, item 2, proposed new subsection 1051(2)(c)

[18] AFCA Bill, schedule 1, item 2, proposed new subsection 1051(4)(f) of the *Corporations Act 2001*

[19] AFCA Bill, schedule 1, item 2, proposed new section 1053 of the *Corporations Act 2001*

[20] AFCA Bill, schedule 1, item 2, proposed new section 1054 of the *Corporations Act 2001*

[21] The Hon. Kelly O'Dwyer MP, Minister for Revenue & Financial Services: Putting Consumers First – Improving Dispute Resolution, 14 September 2017

[22] AFCA Bill, schedule 1, item 2, subsections 1050(1), (2), (3), (5)(a)

[23] AFCA Bill, schedule 1, item 44

[24] AFCA Bill, schedule 1, item 44

[25] AFCA Bill, schedule 1, item 58

[26] AFCA Bill, schedule 1, items 53 and 58; section 14AB of the *Superannuation (Resolution of Complaints) Act 1993* as amended by the AFCA Bill

[27] AFCA Bill, Explanatory Memorandum, paragraph 1.189

[28] AFCA Bill, Explanatory Memorandum, paragraph 1.198

[29] This period can be shortened by the Minister, by notifiable instrument – AFCA Bill, schedule 1, item 58

[30] Many trustees hold an Australian Financial Services licence and are, as a requirement of that licence, members of FOS

[31] AFCA Bill, item 8 of the commencement table

[32] AFCA Bill, Explanatory Memorandum, paragraph 1.197

[33] AFCA Bill, Explanatory Memorandum, paragraph 1.201

[34] *Superannuation (Resolution of Complaints) Act 1993*, subsection 22A(1), read with subsection 63(3B)

[35] *Superannuation (Resolution of Complaints) Act 1993*, subsection 22A(2)

[36] *Superannuation (Resolution of Complaints) Act 1993, s*ection 38

[37] *Superannuation (Resolution of Complaints) Act 1993, s*ection 30

[38] AFCA Bill, schedule 1, item 2, proposed new section 1057 of the *Corporations Act 2001*

[39] AFCA Bill, schedule 2, items 2 – 9, in particular proposed new subsections 912A(1)(g) and(2A) and 1017G(1) of the *Corporations Act 2001* and subsection 101(1)(c) of the *Superannuation Industry (Supervision) Act 1993*

[40] AFCA Bill, schedule 2 item 1, proposed new section 243C of the *Australian Securities and Investments Commission Act 2001*

[41] AFCA Bill, schedule 2, items 3, 4 and 9, proposed new subsections 912A(1)(g) and (2), 1017G(2) of the new complaints and proposed new subsection 101(1)(b) of the *Superannuation Industry (Supervision) Act 1993*

[42] Treasury Fact Sheet: The Australian Financial Complaints Authority (AFCA) - the Government's response to consultation, 14 September 2017