



AUSTRALIAN INSTITUTE of  
SUPERANNUATION TRUSTEES

10 April 2018

Ms Clare McCarthy  
Behavioural Research & Policy Unit  
Australian Securities & Investments Commission  
GPO Box 9827  
MELBOURNE VIC 3001

Email: [policy.submissions@asic.gov.au](mailto:policy.submissions@asic.gov.au)

Dear Ms McCarthy,

**Re: Consultation Paper 298: Oversight of the Australian Financial Complaints Authority: Update to RG 139**

**In brief:**

AIST supports appropriate regulatory guidance for disclosure regarding complaints resolution processes. Provision must be made for any delays in the transition to the new AFCA regime, and AIST supports transitional relief for the event that the transition is unable to occur. AIST recommends that wherever appropriate, communications to members should discuss external dispute resolution schemes in approved generic terms in order to reduce unnecessary costly and resource intensive document production cycles.

*Consultation Paper 298: Oversight of the Australian Financial Complaints Authority: Update to RG 139* (CP 298, the “Consultation Paper”, the “Paper”) sets out some of ASIC’s proposals for their oversight role regarding the Australian Financial Complaints Authority (AFCA). AIST welcomes this consultation and looks forward to the certainty and uniformity offered by final implementation of the changes to the regulatory guidance.

AIST supports appropriate disclosure. Consumers must have full and accurate disclosure about their ability to access external dispute resolution (EDR). Although we expect the successor scheme to the existing EDR schemes to be operational by 1 November, we point out in this submission that provision must be made for any delays. Transitional relief must also be available in the event that the timeline cannot be met.

In this submission we are only addressing the section of the Consultation Paper that deals with EDR disclosure obligations. We plan to additionally seek clarification on circumstances that ASIC publishes reports of licensees that have been reported to ASIC by AFCA. We would welcome measures whereby conduct of high risk licensees are monitored by ASIC based upon AFCA (and other regulatory) reports.

## **EDR disclosure**

In the first instance, we stress that consumers of financial products should be advised by licensees about their ability to access EDR and all disclosure forming part of a fund's collateral of documentation should be kept up to date. We note, however, that updating disclosure related to financial products and services is a lengthy, time consuming and expensive process. In particular, we note that the production of material required to be available in printed formats – especially Product Disclosure Statements (PDS) – is already underway, and in some instances can take as long as six months to complete. The cost, therefore, of undertaking unnecessary extra updates to this material in terms of money as well as disruption to existing business is clearly significant.

More information regarding production schedule timeframes may be found in an attachment to this submission.

As already explained, the traditional production schedule of new documentation for an implementation date of 1 July 2018 is already well underway. However, this is for a traditional implementation. AIST is concerned that there be no need for a document overhaul specifically for the AFCA commencement. We do not support additional proposals to update online information and forms, or personalised disclosures to refer to AFCA outside of the traditional production schedule.

Documents which may require updating include the following regulatory documents:

- Financial Services Guides (FSG);
- Product Disclosure Statements (PDS);
- Short form PDS;
- Periodic statements;
- Periodic statements on death of product holder; and
- Significant Event Notices (SEN).

Other impacted communications which may be used as part of ordinary business with consumers includes:

- Letters to complainants;
- Complaint factsheets;
- Fund websites; and
- Emails to complainants.

We consider that although in practice presently, licensees may refer specifically to the Superannuation Complaints Tribunal (SCT) in these disclosures and communications, a generic reference to dispute resolution would be sufficient. Consequently, AIST would welcome express confirmation from ASIC that this approach is acceptable.

Alternatively, relief should be provided to ensure that licensees are not penalised for the provision of information which may be out of date by the time that the member received it.

We believe that either approach is compatible with the proposal that complainants are made aware of AFCA at the end of the Internal Dispute Resolution (IDR) process. This is the logical place for discussion, since the previous steps (disputed event, complaint and IDR) in the dispute resolution process have not required the involvement of AFCA.

More information regarding statements referring to dispute resolution in regulatory disclosure may be found in the attachment to this submission.

Several key details have yet to be finalised, which is causing significant uncertainty. Matters such as the AFCA commencement date, the date on which superannuation funds must become members of AFCA and the process they must follow, contact details of AFCA and the date on which superannuation complaints tribunal will no longer accept complaints are presently unresolved.

Bigger questions such as the scope of AFCA's jurisdiction, the complaints handling process and the proposed funding model for AFCA, as well as how the SCT will be funded during the wind down phase, are also unanswered.

The provision of generic and readily modifiable text for consumers on fund websites would be of considerable benefit to consumers if it were able to display accurate information and contact details for AFCA (or the relevant complaints body). Information that we believe should form a minimum of this set would include AFCA's contact details, information about when complaints should be sent to AFCA (as opposed to the existing complaints body), details of when and on what basis the complaints body changes (i.e. date of IDR response or other relevant event), or the transition period (if any) when complainants can choose between EDR schemes. This information is all presently unknown.

AIST also recommends that standard generic text be provided by ASIC to ensure that consumers get consistent information. It would be very helpful if ASIC included standard wording about the transitional arrangements and differences between the two schemes so consumers get a clear, simple, consistent message.

This continued uncertainty discussed above also introduces the additional problem of Significant Events Notices (SEN). Licensees are required to provide a SEN to their clients in the event that there is a significant change. This includes changes to circumstances that would form part of the material in a fund's PDS. It is possible that there may be several events occurring during this transition that require significant events notices: The availability of AFCA as the EDR body; the discontinued availability of the SCT as an EDR body; and the possibility that cases presently being heard at the SCT are available to be transferred to AFCA, as well as when this ability to transfer

becomes unavailable. Ideally, these should be able to be integrated into other business processes, however these are still costly activities if trustees are required to contact members in every instance.

We believe that these uncertainties justify transitional relief being granted to licensees to ensure that they are able to comply. As certainty should be gained by 30 June 2019, we suggest that this be the end date for the relief.

Consultation questions: Proposal B6

**B6Q1:** AIST generally considers that the timeframe is acceptable for all consumers who require notification at the end of IDR about the EDR avenues available to them. However, as we explained above, the industry would benefit from express confirmation that the approach we have outlined above – that a generic statement about EDR will ensure that inaccurate information is not provided in material such as PDSs which may conflict with better targeted and more timely communications such as IDR resolution communications. To this end, the timeframe may not be appropriate, if the expectation is that more than generic information is required for documents such as PDSs.

**B6Q2:** AIST would support transitional relief to be available for reasons that we have provided above. This should be available until June 2019.

**Other comments**

AIST welcomes the ability of ASIC to diagnose systemic issues from data provided about complaints by AFCA to ASIC. However, we believe that more information needs to be provided by ASIC in relation to reports of licensees which are deemed significant enough to be published by ASIC. We believe that details need to be provided in respect of the circumstances which justify publication.

In addition, AIST would welcome additional discussion as to ASIC's planned additional uses for the information provided by AFCA. We add to what we have written above that AIST welcomes measures where the conduct of high-risk entities be monitored by the regulator, based upon AFCA's reports, as well as other "business-as-usual" reports.

For further information regarding our submission, please contact Richard Webb, Policy & Regulatory Analyst at 03 8677 3835 or at [rwebb@aist.asn.au](mailto:rwebb@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 \$1.2 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.*

## Attachment: Disclosure Requirements – AFCA

The information in this attachment has been provided by Hayley Pope, Legal Counsel at Cbus.

### Mandated Legislative Disclosures

Reference	Document	Requirement	Comments	Timeframe for updating
<b>Sections 942B(2)(h) &amp; 942C(2)(i)</b>	<b>FSG</b>	Information about the dispute resolution system that covers complaints by persons to whom the providing entity provides financial services and about how that system may be accessed.	Does not specifically require contact details for EDR scheme. Reference is to “dispute resolution system” – which would cover both IDR and EDR. Phone number and website details for Fund should be sufficient to cover off requirement to provide details about how system may be “accessed” – particularly as need to go through IDR process first.	<b>Minimum of 1 month.</b> 10 days for printing, 10 days for updates and sign off.
<b>Section 1013D(1)(g)</b>	<b>PDS</b>	Information about the dispute resolution system that covers complaints by holders of the product and about how that system may be accessed.	Does not specifically require contact details for EDR scheme. Reference is to “dispute resolution system” – which would cover both IDR and EDR. Phone number and website details for Fund should be sufficient to cover off requirement to provide details about how system may be “accessed” – particularly as need to go through IDR process first.	<b>Minimum 4 months.</b> timeframe, including printing (although this may be extended due to all industry requiring to re-print).
<b>11(1)(c) &amp; 11(2) Sch 10D Corporations Legislation</b>	<b>Short Form PDS</b>	11(1)(c) - Explain how to make a complaint (by means that include the provision of <b>relevant contact details</b> ) 11(2) – The superannuation trustee:	Requirement for actual contact details to make a complaint – does not specify or distinguish between IDR and EDR. However, as there is provision for IBR, details can be included on website – with internal complaints details in PDS with reference to	<b>Minimum 4 months.</b> timeframe, including printing (although this may be extended

Reference	Document	Requirement	Comments	Timeframe for updating
		(a) May provide more detailed information about cooling off periods, complaints and dispute resolution; and (b) May provide that information by applying, adopting or <b>incorporating a matter in writing.</b>	fact that an EDR scheme exists – and even reference to name as this is known can be included.	due to all industry requiring to re-print).
<b>Reg 7.9.75(1)(c)</b>	<b>Periodic Statements</b>	A statement informing the product holder: (i) that there is a dispute resolution mechanism that covers complaints by holders of the product; and (ii) of the means by which a product holder is able to gain access to that mechanism.	Does not specifically require contact details for EDR scheme. Reference is to “dispute resolution mechanism” – which would cover both IDR and EDR. Phone number and website details for Fund should be sufficient to cover off requirement to provide details about how mechanism may be “accessed” – particularly as need to go through IDR process first.	Technically 6 weeks, but experience is that it <b>takes several months</b> . RG 97 changes going in June – changes already provided. <b>Administrator Dependent.</b>
<b>Reg 7.9.53</b>	<b>Periodic statements upon death of product holder</b>	(a) a statement setting out details (in summary form) of arrangements that the issuer has made to deal with inquiries and information about the dispute resolution system that covers complaints; or (b) a statement that the details are available on request.	Option to utilise part (b). Otherwise, no requirement for contact details to be provided – also only requires summary, so link to website with more details would seem appropriate. Cbus currently includes SCT details, so this will need to be updated.	Technically 6 weeks, but experience is that it <b>takes several months</b> . RG 97 changes going in June – changes already provided. <b>Administrator Dependent.</b>
<b>Section 1017B(1A) &amp; (4)</b>	<b>Significant Event Notice</b>	Requirement to notify product holders of: (1A) any material change to a matter, or significant event that affects a matter, being a matter that would have been required to be specified in a PDS for the	As dispute resolution details are included in PDS, a SEN would be required as change is material. The requirement to provide holders with information reasonably necessary for holder	<b>3-month lead</b> time required between final artwork and sending.

Reference	Document	Requirement	Comments	Timeframe for updating
		<p>financial product prepared on the day before the change or event occurs.</p> <p>(4) notice must give the holder the information that is reasonably necessary for the holder to understand the nature and effect of the change or event.</p>	<p>to understand nature and effect of change would indicate that there would need to be some commentary about the transitional arrangements and the differences between the existing and future schemes. Contact details would also be required.</p> <p>While an SEN can be included along with annual statements, given the lead time required to prepare these statements (as well as accompanying collateral), actual details will need to be known well in advance of date statements are to be sent.</p> <p>Alternative is to perhaps refer to link to website and a date when final details will be known?</p> <p>Cost and resources to otherwise write to all members would be significant. Other option would be to write to those that have IDR complaint as at a relevant date with specific and further detail and to keep generic SEN in annual statement run higher level.</p>	<p><b>Administrator Dependent.</b></p>

## ASIC Requirements

Reference	Document	Requirement	Comments	Timeframe for updating
RG 165.130	Letter to Complainant	If complaint has been through IDR process, but remains unresolved or is not resolved within the relevant timeframes:	For Cbus this can be managed internally and therefore, will only require change to EDR contact details. However, for	10 days / 3 months.

		Information the complainant that they have right to pursue complaint with EDR scheme; and Provide details about how to access EDR scheme.	funds that use Administrator for Complaint Management, there may be similar lead times as for other Administrator Dependent documents.	
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## Fund Collateral

Document	Details included	Comments	Timeframe for updating
Fact Sheet	Contact Details and complaint lodgement time limits	Forms part of IBR for PDS.	See PDS details – although as IBR, won't require printing, so can reduce by 10 days.
Website	Complaints section includes links to SCT and FOS	Fact Sheet link included within website content	10 days.
Letters	Include contact details for SCT.	For Cbus this is managed internally, so timeframe is only about 10 days. However, for funds that use administrator for Complaints Management, there is likely to be a longer lead time required.	10 days/ 3 months.
Emails	Include contact details for SCT.	For Cbus this is managed internally, so timeframe is only about 10 days. However, for funds that use administrator for Complaints Management, there is likely to be a longer lead time required.	10 days/ 3 months.

## Summary of Issues

- (a) A review of the legislative requirements, shows that in most, if not all cases, there is not a legal requirement to have the contact details of the EDR scheme on disclosure documents. However, in practice the details of existing EDR schemes do currently appear in these documents and transitional

arrangements will need to be made to either include these details on a website, or to otherwise update these documents with relevant AFCA details.

(b) The minimum information required for industry to meet timeframes to update collateral are:

(i) Contact Details;

(ii) Details about cut-off dates for existing schemes and starting date for AFCA i.e. is the date of an IDR response determinative of which scheme a complaint may be lodged, or is there scope for a member to choose provided they lodge complaint within relevant timeframe in legislation or terms of reference?

(iii) Any details of any transitional requirements – i.e. are SCT complaints able to be withdrawn from SCT and lodged with AFCA?

(c) Administrator Dependent collateral and changes will require additional lead times, particularly given that the change affects the whole of the industry. Estimates provided are based on past experience and will need to be confirmed with individual administrators.

(d) Similarly, printing times may be extended given industry wide impact.

(e) Consideration should be given to ASIC providing standard wording about the transitional arrangements and/or differences between current and future schemes so that consumers are being given a consistent message – that is clear and simple.