



Australian Financial Complaints Authority

29 June 2018

Australian Financial Complaints Authority (AFCA) – LGS Submission

Local Government Super (LGS)

LGS is an Industry superannuation fund established in 1997 which was traditionally the superannuation fund for current and former NSW local government employees. Since this time, LGS has established a public offer division and currently manages more than \$11 billion in retirement savings.

Due to the nature of the ever evolving superannuation landscape, LGS maintains a close watch over changes and amendments suggested, recommended and made by the legislature and regulatory. To this end, LGS has reviewed in detail the draft AFCA Rules of Complaint Resolution Scheme (the **Rules**) and considered the AFCA Consultation paper dated 1 June 2018, and provides the following submission to AFCA for its consideration.

Complaint Resolution Timeframes (Rule A.5)

We note that AFCA Rule A.5.2 states that where AFCA receives notice of a complaint, it will “...refer the complaint back to the Financial Firm to either resolve the complaint or to provide its position in relation to the complaint”. We believe that this Rule raises the following concerns, namely that there:

- (1) is no requirement for the member to approach and utilise the Financial Firms Internal Dispute Resolution procedure (**IDR**) in the first instance; and
- (2) is no indication of minimum or maximum timeframes for the Financial Firm to review the member complaints.

In relation to (1) above, we believe that AFCA should reinstate the requirement for members to approach the Financial Firm in the first instance in order that the complaint is investigated and the parties are able to negotiate an outcome. Whether or not an outcome is reached which is favourable to the member, requiring that the Financial Firm review the complaint through its IDR prior to the complaint being escalated to AFCA has the following benefits:

- (a) the parties are able to attempt to resolve the complaint prior to AFCA’s involvement, where this is successful (and we believe that the majority of complaints are resolved at the Financial Firm level) this will ensure that AFCA is not unduly inundated with simply-resolved complaints;
- (b) the subject matter of the complaint is investigated at length and an appropriate file has been collated. Should the matter then be referred to AFCA, the AFCA process will benefit from the investigative work that has been already undertaken, this will allow AFCA to commence its investigations from a more informed position and will significantly reduce the processing/hearing time required; and
- (c) where a Financial Firm is familiar with the complaint, it will be in a better position to respond to AFCA requests in a shorter time-frame.

In relation to (2) above, we note that currently superannuation trustees are provided with 90 days within which to respond to member complaints relating to superannuation (previously under the jurisdiction of the SCT) and 45 days within which to respond to complaints regarding the provision of financial advice/services (previously the jurisdiction of FOS). In considering point (1) above, namely that there is no requirement for the member to first approach the Financial Firm prior to making a complaint to AFCA, we submit that minimum and maximum timeframes should be pre-determined and included within the Rules. This submission is based on the following:

- (a) timeframes less than the current 90 days and 45 days may be impractical and hinder the investigation process;
- (b) Financial Firms will need to ensure that they are able to respond to directions by AFCA in a timely and informed fashion. Where a complaint is referred to a Financial Firm by AFCA (without the benefit of first going through the IDR process) the Financial Firm will need to undertake investigations prior to being in an informed position to respond to AFCA or the member and, depending on the complexity of the subject matter of the complaint, some investigations may require more time than others; and
- (c) without the benefit of minimum and maximum timeframes that AFCA is able to request of Financial Firms, Financial Firms will not be able to best prepare their internal policies and procedures to cater for requests made by AFCA.

We suggest that members be required to first approach the Financial Firm to attempt to resolve their complaint and that AFCA clarify the maximum and minimum timeframes within which they will require Financial Firms respond to their requests under Rule A.5.

Clarity regarding Trustee Internal Dispute Resolution System

In addition to the comments made previously regarding members being required to utilise the Financial Firms IDR prior to submitting a complaint to AFCA, we note that the Rules are silent in relation to how current IDR processes are impacted by the AFCA process. The SCT and FOS supported the IDR system by requiring complaints be heard through the IDR prior to being escalated to them and also by not hearing complaints while they were being investigated through the IDR, however, the AFCA rules are silent in this regard. This raises the following concerns:

- (1) there is no prohibition on a member bringing a complaint to AFCA while the complaint is currently being investigated by the Financial Firm; and
- (2) how will the Rules affect the current complaints resolution requirements, namely those contained in SIS? SIS currently provides 90 days within which a trustee is required to respond to a complaint, however, the current rules do not give the trustee the opportunity to undertake this process and do not provide the trustees with the 90 days to review (as earlier discussed). Will there be amendments made to legislation or are these to remain unchanged?

We request that clarity be provided regarding the interaction between AFCA and the current IDR.

AFCA Cost Structure

We note that the cost structure of AFCA is yet to be decided.

We suggest that consideration be had to the implementation of an industry wide levy to fund AFCA as opposed to a member-pay system. This is based on the concern that where members bring unfounded complaints to AFCA, this will require the Financial Firm to pay a set amount for the AFCA proceedings. In these situations, Financial Firms may determine that it is financially viable for them to settle unfounded complaints with members, as opposed to proceeding with the AFCA process and incurring a higher cost. While this may be the better financial option in this situation, it means that the member-base is

ultimately paying for unfounded claims which is both unjust and which may create unfounded precedents.

Although an industry wide levy may actually cost an individual Financial Firm more than if they were to pay for each complaint, ensuring that the cost is not linked to the proceedings will help ensure a fairer system.

We suggest that an industry wide levy be considered to fund AFCA.

Appeal Mechanism

We note that AFCA does not currently contain an internal appeal mechanism, and that should a party wish to appeal an AFCA decision, this will need to be done by legal proceedings through the Courts. We suggest that consideration be had to the creation of an AFCA Panel, which would be tasked to hearing appealed AFCA decisions.

All legal proceedings are timely and costly processes, which are not always viable options to members or to Financial Firms. The creation of an AFCA panel to hear appealed decisions, will provide parties with an intermediate process, prior to an escalation to the courts.

We suggest that AFCA implement an internal appeal mechanism through the creation of an AFCA panel.

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