



Community and Public Sector Union

Melissa Donnelly ♦ Deputy Secretary

2 October 2017

Mr Alan Raine
Acting Committee Secretary
Senate Economics Legislation Committee

By email: economics.sen@aph.gov.au

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

Dear Mr Raine

As the union representing staff in the Superannuation Complaints Tribunal (SCT), the Community and Public Sector Union (CPSU) welcomes the opportunity to make a submission to the inquiry by this Committee into the Bill.

We note that the intention of this Bill is to establish the Australian Financial Complaints Authority to replace the Financial Ombudsman Service (FOS), the Credit and Investments Ombudsman (CIO) and the Superannuation Complaints Tribunal (SCT). The CPSU has previously made submissions to the various stages of the processes¹ leading to the introduction of this Bill. Our focus in this submission remains on the impact of this Bill on the SCT and its stakeholders.

The CPSU is of the view that the SCT should not be included within the structure and operations of the proposed Australian Financial Complaints Authority (AFCA) because:

1. There is no compelling case for the inclusion of the SCT in the proposed scheme.
2. The proposed scheme will reduce consumer protections and rights in relation to superannuation matters.
3. Additional costs may be imposed on the superannuation industry to fund AFCA.
4. The focus on the SCT does not address the widespread community concerns about the operations of the financial services sector.

¹ <https://consult.treasury.gov.au/financial-system-division/dispute-resolution/>

1. There is no compelling case for the inclusion of the Superannuation Complaints Tribunal (SCT) in the proposed scheme (AFCA).

For the vast majority of Australians, superannuation is or will be their largest asset in retirement. It is imperative that Australians have confidence that if they have a problem with the decisions about their superannuation, that there is a robust and independent external complaints body that has the teeth to enforce their decisions.

The list of scandals plaguing the banking and the finance sector is long. The number of complaints received by the SCT is dwarfed by those handled by FOS and CIO. In the year 2015-2016, the complaints lodged with SCT amounted to just under half of those lodged with CIO and 7% of those with FOS.² Despite conducting two reviews into the sector, action has been minimal, piecemeal and disingenuous. This Bill does little to hold the banking or finance sector to account. Instead it reserves the most radical changes for the superannuation industry, which has had not seen anything close to the litany of scandals that have beset the finance sector.

The CPSU understands that consumer group concerns and the Chair of the Review, Professor Ian Ramsay, both base their support for the inclusion of the SCT in this model on a preference for a private company over tribunals. We contend that the issues they have identified with the SCT are because of underfunding and a failure to modernise governance arrangements.

The CPSU acknowledges there have been delays in processing superannuation complaints due to chronic underfunding of the SCT. Underfunding of the SCT is an issue widely acknowledged³. It is not the fault of the SCT, its employees or the statutory model. The SCT is currently industry funded, receiving levies collected by APRA, which are then provided to ASIC to distribute to the SCT. The funding model has been criticised as indirect, inefficient and lacking in transparency. Establishing a more direct, long term funding solution for the SCT should be the priority, not dismantling a highly regarded statutory body.

The CPSU strongly believes that chronic underfunding is neither a feature of statutory body, nor is it an insurmountable problem. There simply needs to be the political will to do what is in the best interests of Australians as they transition from the workforce to retirement: to properly fund the current tribunal which is independent, robust and offers Australians a high level of consumer protection and enforceability that the proposed AFCA will not provide.

Unlike the finance sector, there are no widespread calls for reform in the superannuation sector and the inclusion of the SCT in this process was unnecessary from the start.

2. The proposed scheme will reduce consumer protections and rights in relation to superannuation matters

The SCT and our members who work there perform an essential role in providing a free dispute resolution service that is widely seen as fair, independent and effective by both industry and consumers alike. Superannuation is both universal and compulsory, meaning that any changes have the potential to affect all Australians. The SCT was set up specifically

² Interim report pp.53-83 https://static.treasury.gov.au/uploads/sites/1/2017/06/R2016-002_EDR_interim.pdf

³ See for example Interim report pp. 117 ib id

to handle complaints and given statutory powers to protect Australians. The rationale for establishing the SCT was the need to ensure legislative protection for complainants.

The move from a tribunal to a private company undermines the fundamental premise of the consumer protections provided by the SCT: access to decisions that are open to judicial review; and processes subject to the requirements of administrative law. This Bill attempts to replicate the majority of the powers and functions of the SCT into the new body. However, this framework fails to provide the opportunity for complainants to challenge the decisions of AFCA in relation to superannuation other than on matters of law through the Federal Court. AFCA, as a private company is also exempt from the requirements of *Freedom of Information 1982 (Cth)*. As a tribunal the SCT is bound by higher legal standards, including in relation to the application of procedural fairness, than would apply to a private company. In our view, the current model therefore provides better protections for consumers and an effective dispute resolution mechanism for consumers and industry alike which only requires improvement by addressing underfunding issues.

Compliance with decisions is not currently a problem for SCT. In relation to the FOS, since 1 January 2010, there have been 35 financial firms refuse or be unable to comply with 143 FOS determinations made in favour of approximately 203 consumers⁴. While the Bill requires financial firms who are members of the scheme to be bound by the decisions of the AFCA, there is no clear method of enforcement.

In addition to these issues, the transition to the new model will see a significant loss of expertise. Many superannuation complaints are in relation to disputes over the distribution of death benefits. These matters need a careful balance of formality and support for the parties in a dispute at a time when the people can be at their most vulnerable and fractious. By its nature a tribunal system which specifically focusses on superannuation matters is better suited to these types of disputes.

3. Additional costs will be imposed on the superannuation industry to fund AFCA

There is also a concern that the superannuation industry will be cross-subsidising complaints from the more problematic financial services and credit elements of the AFCA.⁵ This issue also relates to the proposed compensation scheme of last resort. Industry Super Australia argue that⁶

There is no need to include APRA-regulated superannuation entities in a compensation scheme of last resort and doing so will be inequitable and unfair to its members who will bear the costs associated with funding arrangements that will apply principally or wholly to other unrelated sections of the financial services industry.

⁴ <https://fos.org.au/fos-circular-28-home/fos-news/unpaid-determinations-update/>

⁵ p3, pp7–9 <http://www.industrysuperaustralia.com/assets/Submission/AIST-ISA-Improving-dispute-resolution-submission-June-2017.pdf>

⁶ p4 *Supplementary Submission, External Disputes Resolution Review*. Industry Super Australia. 30 June 2017

4. The focus on the SCT does not address the widespread community concerns about the operations of the financial services sector.

The superannuation industry and its relationship to Australians are significantly different to that of the finance sector and as noted the superannuation industry hasn't the level of the misconduct we have seen coming from the banking and finance sector.

One of the strengths of the existing SCT is that it is widely held in high regard because of its independence and integrity. Concerns have been raised about the independence of a new AFCA. Other industry schemes such as the FOS and CIO have been criticised for being too close to their constituent members. Furthermore, there is concern that if the SCT is rolled into AFCA, superannuation complaints will disappear in an ocean of financial sector complaints, which are far more numerous.

While the Bill outlines some new powers for the Australian Securities and Investment Commission (ASIC), these all pertain to regulating AFCA and not the finance sector itself, which was the justification for the Ramsay Review and the source of concern for millions of Australians. Short of reducing some duplication and jurisdictional issues between FOS and CIO (not the SCT), there is nothing in this reform that will materially improve the experiences of Australians and their interactions with banks and the finance sector as a whole. There is no benefit to Australians seeking redress with their superannuation provider. Unlike the finance sector, there are no widespread calls for reform in the superannuation sector. There are few submissions to the Ramsay Review that call for what is being proposed in this Bill, including by the industry.

CPSU members working in the SCT are deeply concerned that the proposal to create a new external dispute resolution body that is a company limited by guarantee will move statutory powers from a tribunal to a private company. The SCT has Government appointed decision makers with legislative powers, whereas AFCA would appoint its own decision makers. One member described the proposal as effectively privatising a public right.

Australians have been calling for serious action to improve the accountability of the banking and finance sector, yet the Government's response is to review external dispute resolution bodies and not the sector itself. What is more troubling is not just that these reforms will not improve the experience of Australians with that sector, but the biggest changes are reserved for superannuation.

Conclusion

The CPSU supports maintaining a separate SCT and is unconvinced that the proposed AFCA will improve outcomes for Australians in regards to superannuation. The SCT has the confidence of industry and consumers with regards to independence and integrity, to an extent that industry schemes simply do not have.

The CPSU strongly believes that chronic underfunding is neither a feature of statutory body, nor is it an insurmountable problem. There simply needs to be the political will to do what is in the best interests of Australians as they transition from the workforce to retirement: to properly fund the current tribunal which is independent, robust and offers Australians a high level of consumer protection and enforceability that the proposed AFCA will not provide.

Rather than seeking to merge the SCT, through further consultation with stakeholders and willingness by Government, we should be working on the simpler and more effective approach of developing and implementing the changes that would enable the Superannuation Complaints Tribunal to operate to its full potential. The CPSU considers that this is in best interests of consumers and the superannuation industry.

For any further information, please contact Graeme Price, CPSU Organiser via email

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Yours sincerely

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Melissa Donnelly
Deputy Secretary