

1 Industry Funds Forum

(i) Industry Funds Forum (IFF) is a body of 25 large industry superannuation funds with a combined membership of over 4 million Australians and combined assets of more than \$20 billion. IFF exists to promote the interests of these members.

(ii) IFF appreciates the opportunity to present a written submission to the Review. IFF is not seeking to present a detailed submission on each of the matters raised in the Issues Paper. Rather the IFF is seeking to focus on matters of particular interest to members of Funds that are members of the Forum. IFF would expect to support the positions of some other organisations making submissions to the Review, including ASFA and AIST. The IFF will clarify this matter during our proposed personal appearance before the Review.

2 Executive Summary

The key positions of IFF on the broad issues raised by the Issues Paper are:

- (a) We support the current regulatory framework because it represents an appropriate balance between on the one hand the need to protect superannuation fund members' savings and the need for broad community support for superannuation, and on the other hand the need to ensure that whatever regulatory regime that is in place is efficient and facilitates an appropriately competitive market.
- (b) We strongly support the trustee system and in particular the equal representation nature of trustee boards. There is no need for the licensing of trustees. The current system works well; no such licensing requirements exist in the broader corporate sector; and licensing would represent an unnecessary regulatory and cost burden for superannuation funds and therefore for superannuation fund members.
- (c) We recommend that the Productivity Commission's findings reflect the above and not propose any significant structural regulatory changes to the superannuation system.

3 Matters Raised In The Issues Paper

(i) General Issues

The IFF believes that there are certain distinguishing features of superannuation which require it to be closely regulated by Government. These features include:

- that the main element of superannuation savings (the Superannuation Guarantee Levy) is a compulsory levy mandated by legislation and is therefore compulsory rather than discretionary savings;
- the compulsory nature of the savings means that many members of superannuation funds have not made a conscious decision that they wish to participate in this form of saving and their level of knowledge of superannuation generally, and possibly of the available products, is often not sufficient to ensure that informed decisions will always be made;
- superannuation savings are, next to members' homes, often the largest and therefore most important asset that they will own;
- detailed disclosure requirements are mandated to ensure that members and potential members receive appropriate information to enable them to make informed decisions.

The legislation and regulations that are the subject of this review do not impose unreasonable or unnecessary constraints on competition within the industry. Most of the legislative and regulatory provisions in place exist to provide protection and confidence to members of superannuation funds. As noted above this is important and should be retained.

(ii) Objectives of the legislation

One of the major benefits of the legislation, and the more comprehensive regulatory regime that it provides, is that corporate superannuation funds are required to be more independent of the employer than previously. This has resulted in corporate superannuation funds being more likely to be able to provide benefits to members if the employer encounters financial difficulties. There has been a reduction in the reporting of corporate failures that have resulted in

members of the relevant corporate superannuation funds losing their assets. This has assisted to generate increasing confidence in the broader superannuation system.

(iii) Costs of the legislation

The costs of compliance with the provisions of the full regulatory regime are significant. They involve considerable cost, and in particular considerable time by trustees, in ensuring that compliance is being maintained. However for the most important stakeholders in the superannuation system – the members – the costs, both in money and time, are a sound investment in helping to ensure that their superannuation nest-egg is being protected. The IFF contends that there is no significant scope to reduce the costs of compliance without compromising the security of members' superannuation investments.

The legislation is prescriptive however the IFF believes that this is necessary. The IFF notes that the legislation is complex by virtue of the subject matter. However whilst we would support measures to simplify the legislation we would not support any such measures that had the simultaneous effect of reducing the security of members' superannuation investments or potentially undermining public confidence in the superannuation system.

(iv) Alternative means of achieving the objectives of the legislation

The IFF can see no benefit in changing the legislation such that the enabling Act is confined to guiding principles for regulators, with additional detail contained in regulations. Further the IFF is strongly opposed to weakening the legislation and replacing its prescriptive requirements with the self-regulation of industry codes. There has been no substantial debate within the industry, nor any indication from members, that this would be worthwhile and in members' interests. There is no indication that the current system is failing its most important constituents, the members. Nor is there any indication that alternative arrangements would advance the interests of members.

A heavy onus exists for proponents of self-regulation to prove the superiority of that framework compared to the current arrangements. Members would not easily forgive those that introduce such a system if it leads to market failure that has not been a hallmark of the current system.

In relation to the issue of the lower cost that might be associated with an alternative approach of managed investments, it should be noted that unit trusts and most other superannuation arrangements, including for-profit superannuation funds operate with a *higher* cost structure than industry superannuation funds. The KPMG Public Offer Superannuation Fund Index for the year to 30 June 2000 listed 27 public offer entities, 7 of which were industry superannuation funds. The 5 lowest cost providers in the KPMG survey were all industry superannuation funds.

(v) Trustee Rules

The IFF strongly believes that it *is* appropriate that the SIS legislation focuses on trusts as the principal legal structure of superannuation funds. It is contended that a trust structure provides the greatest protection for members.

There are significant duties and obligations imposed on trustees. Aside from the obligations under the various superannuation legislation and regulations, there are duties imposed by corporations law which are entirely appropriate and do not constitute an excessive burden or involve excessive costs. Additionally it is noted that the recent changes introduced by the Financial Sector Legislation Amendment Act (No. 1) concerning strict liability provisions for trustees are designed to further improve the governance structure of trustee superannuation funds.

The IFF strongly believes that the requirement for equal representation of employers and members in employer-sponsored funds has delivered very significant benefits for members. Indeed the IFF believes that the equal-

representation requirement has been a major factor behind the success of the overall superannuation system in Australia. Compliance with this requirement does not involve unwarranted costs and as noted above it is seen by superannuation fund members as a very positive feature of the current system.

The requirements relating to trustee appointment and removal are appropriate. The current range of requirements for approved trustees include having to satisfy the “Disqualified Person” test of SIS; and satisfactorily passing a Police Check. The IFF does not believe that all trustees should be subject to some form of licensing regime. The current system is working well in the interests of members. Aside from the various existing requirements of a trustee on appointment (and ongoing requirements) most trustees maintain an active interest in acquiring additional knowledge and expertise on an ongoing basis. For example ASFA and AIST conduct courses which are well attended by trustees.

The generally successful operation of industry superannuation funds, and other superannuation funds with genuine employer and member representation, demonstrate the benefits of a diversity of backgrounds, skills, qualifications and experience on trustee boards.

Recent instances of corporate failure such as HHH, and Harris Scarfe, demonstrate that boards comprising “name” directors with seemingly impressive educational qualifications and blue-chip corporate experience are no guarantee of sound prudential governance and financial success. Indeed the commitment that a trustee director typically demonstrates when pursuing a matter in the knowledge that they may well have to directly deal with a member who may be aggrieved, will often lead to a more member-oriented result than one pursued by a more disinterested director.

(vi) Regulated Superannuation Service Providers

Compliance audits are a time-consuming process for superannuation funds. However they do afford regulators an opportunity to take a close look at a superannuation fund to satisfy themselves that members' interests are being safeguarded. Given the scarce resources of the regulators the IFF would suggest that having regard to the sound history of the larger funds; the calibre and reputation of their service providers; and their ready availability to be open to requests for information from the regulators, that more of the regulators' time be devoted to small superannuation funds. Many smaller superannuation funds would appear to pose a greater risk as far as prudential oversight is concerned because of the possible absence of some of these factors.