



trustees protecting your super

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Submission from the Australian Institute of Superannuation Trustees

On

Productivity Commission Inquiry into Superannuation Laws

11 May, 2001

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Submission from AIST

AIST's membership includes some 900 trustees of not for profit superannuation funds. Fund secretaries and other fund staff are eligible for associate membership.

AIST's mission is to support its trustee members through education and training on matters directly relevant to their fiduciary duties under SIS.

AIST acts as an advocate for the representative trustee system.

On behalf of its members, AIST offers the following comments on the terms of reference of the current Productivity Commission inquiry.

General Issues

The representative trustee system is the key to the success of the current prudential regulation regime.

We believe the current prudential regime is effective in protecting superannuation savings.

Representative trustees add value to the system. They are completely independent, and have no conflict of interest.

They are required to act solely in the interest of fund members, and protect and grow their members' retirement savings.

In applying the sole purpose test to investing members' money, trustees are free of the requirement to serve shareholders' interest. Such conflict may occur in the management of superannuation savings by commercial providers.

For these reasons AIST views with concern the trend to move corporate superfunds to mastertrusts.

Recently AMP was reported to have transferred 95 corporate funds to a mastertrust. AIST believes that unproductive administrative complexity particularly arising from the superannuation surcharge will lead more employers to take this step.

The members of funds so affected in our view lose the considerable added value of having trustees directly representing their interests. Given the commercial character of mastertrusts it is likely that the administrative cost to the member will eventually rise. **AIST does not propose any alternative approaches to prudential regulation and in particular would oppose the replacement of current arrangements by self regulation.**

Compliance costs

AIST believes that current compliance and reporting requirements are in general justified.

The cost of compliance with SIS is high, and the complexity of the regime imposes heavy burdens on trustees. These costs and burdens are justified where they advance the safeguarding and growing members' funds.

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Trustees directly represent contributing employers or fund members.

They therefore are able deal with matters such as disability payments and death benefits in a manner that maximises the member's interest

The increasing complexity of the regulatory regime does raise questions of trustee competence, The industry practice of outsourcing specialist and technical matters and administration does not lighten the fiduciary burden on trustees nor reduce the need for trustees to have a high level of knowledge and understanding of these decisions.

The recent introduction of strict liability for breaches of SIS and reversal of onus of proof onto the trustee have heightened the need for trustees to have a high level of knowledge relevant to taking complex decisions in their members' interest.

In response to these changes AIST advocates upgrading and extending trustee education. Given the modest resource base of AIST we seek from the regulatory bodies support and input into our education programs.

AIST supports the current regulatory arrangements, but recognises that the ongoing effectiveness of the regime must be supported by well informed and active trustees.

The AIST/APRA seminars held earlier in 2000 to discuss with trustees the purpose and proposed effects of the changed application the Criminal Code to breaches of SIS illustrate the beneficial outcomes of such a partnership.

AIST would also appreciate direct input and assistance from APRA in updating and expanding our comprehensive Trustee Handbook.

This is by far our most valued education activity, the handbook is used regularly by trustees as a reference and guide to legislation.

This kind of activity in support of trustee competence could greatly strengthen the current system, more so than further legislative change.

AIST proposes that APRA establish an ongoing partnership with AIST for the purpose of providing trustees with accessible, up to date information on regulatory matters.

Simplification

AIST supports the proposals in relation to age based limits put to the Commission by the Chartered Accountants.

Further legislation

AIST believes that the proposed application of licensing requirements to trustees, included in the Financial Services Reform Bill should be withdrawn.

The operation of SIS means that such licensing would not add value to trustees' prudential performance and would add unnecessary cost and administrative complexity

Competition: there is a high level of competition among service providers to superannuation funds: investment managers, asset consultants, administrators and other advisers.

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While the high cost of these services is a matter of ongoing concern and review by trustees, AIST does not propose any regulatory measures in this area.

Trustees have had some success, most notably in the case of administrators, in reducing service provider charges.

More information and support through enhanced education activities would assist trustees to achieve the benefits of competition in their dealings with service providers.

Competition and Choice of Fund

The question of the extent of competition among superfunds and other superannuation providers, and their capacity to attract and keep members has been extensively debated in parliament and across the industry for some years

The Coalition Government's policy is to mandate a much wider choice of fund. As yet there has been no agreement with opposition parties on the terms for extending Choice of Fund through legislation.

The set of proposals contained in the government bill presented but not passed was resisted by AIST because of the greatly increased costs the proposed measures would have imposed on superfunds to the detriment of members.

Equally, we remain concerned about the danger in a poorly designed Choice regime of ill informed, or wrongly advised fund members losing their retirement savings.

We note the recent failure of a number of commercial superannuation providers.

We are concerned about the large amounts of super savings that are unclaimed or "lost" AIST believes that members should be able to choose a fund that meets their needs without being exposed to high costs, complexity and high risk.

Employees in a number of recent cases, as a result of bankruptcy or other commercial failure by their employers, have lost their superannuation savings

AIST supports legislative change to require quarterly payments by employers of SG contributions.

Complaints

AIST has supported and cooperated with the Superannuation Complaints Tribunal. We are appreciative of the participation by the Commissioner in education activities for our trustee members.

Conclusion

AIST supports the continuation of the current prudential regulation of superfunds.

In particular we support the equal representation trustee structure, which offers maximum protection to members within an efficient cost structure.

AIST strongly advocates more regular participation in trustee education by the regulatory bodies, especially APRA.

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This could be achieved by the formation of a formal partnership between the regulators, particularly APRA and AIST.

A handwritten signature in black ink, appearing to read 'Susan Ryan'. The signature is fluid and cursive.

Susan Ryan AO
President
Australian Institute of Superannuation Trustees

11 May 2001

PRODUCTIVITY COMMISSION INQUIRY INTO SUPERANNUATION

I have set out below comments on some of the issues.

OBJECTIVES OF THE LEGISLATION

What are the principal benefits of the legislation?

The fact that it is comprehensive and it is the main point of reference for superannuation funds on funds management issues.

The introduction of the Financial Services Reform Bill will change this and will introduce greater complexity into the management of superannuation funds and increase the costs of compliance.

How well does the legislation accommodate technological and other market driven changes, including product development? How well does the legislation cope with contemporary problems?

The legislation has coped to date. However, the increasing trend to outsource the provision of certain services, such as administration, and the demand by members for additional products and services, such as allocated pensions and financial advice has resulted in the legislation not really accommodating these developments.

The legislation should be technology neutral as rapid changes in technology means that any legislation that assumes a certain status of technology development will become outdated very quickly.

COSTS OF LEGISLATION

Costs arise in keeping up to date with and implementing procedural and policy changes to ensure compliance with the legislation.

The costs are administrative in nature and, given the trend to outsourcing of administration, exacerbated due to the introduction of the GST which has inflated costs further.

ALTERNATIVE MEANS OF ACHIEVING THE OBJECTIVES OF THE LEGISLATION

The Managed Investments Act has not been operating long enough to assess its worth as an alternative approach. Adoption of such an approach implies a greater role for ASIC, as the regulator of managed investment schemes, compounding the problem of regulation of the industry by multiple regulators.

Self regulation may appear an attractive option but is probably unsuitable for the superannuation environment, given its complexity and the number of participants with

divergent interests. A “light touch” regulatory regime, such as that proposed for privacy would seem to be a better alternative. However, the proposed privacy regime is untested at this point of time.

LEGISLATION - SPECIFIC ISSUES

Trustee Rules

Is it appropriate that the SIS Act focuses on trusts as the principal legal structure of the superannuation funds? Could other legal structures for superannuation funds be contemplated - for example, incorporated financial institutions that are prudentially supervised under other legislation?

The trust structure appears to have served the industry well. The "Sole purpose" test could be modified to provide a greater flexibility for funds in providing other benefits related to members' retirement savings, such as investment advice.

Alternative models, such as incorporated financial institutions may provide greater flexibility, but give rise to their own supervisory issues. The recent HIH collapse is not a great example of an alternative regime.

Are the duties and obligations imposed on trustees warranted or do they involve excessive costs?

Duties are onerous and are becoming more so, eg. strict liability provisions. It may be discouraging more people from taking on the role.

Note: Coles Myer is about to conduct its next elections for member elected trustees of the Fund. The number of candidates is approximately 1/3 of the number that nominated for election 3 years ago.

Does the requirement for equal representation of employers and members in employer-sponsored funds deliver significant benefits? Does compliance with it involve any unwarranted costs?

Significant benefits are:

- Greater diversity on trustee boards - they are therefore more representative of the membership as a whole.
- More women on trustee boards than in the corporate environment.
- Commonsense approach to decision-making
- Minimises influence of informal networks on the composition of trustee boards.

Are the requirements relating to trustee appointment and removal appropriate? Should all trustees be subject to some form of licensing regime?

Existing requirements are adequate. Licensing requirements are just another revenue raising opportunity and may discourage the "average" fund member from becoming a trustee.

RULES GOVERNING OPERATIONS

Which of the requirements governing the operations of superannuation funds (apart from those excluded from the Commission's inquiry) involve significant benefits or costs?

Use of advisers such as investment managers, custodians, asset consultants is necessary due to complexity of superannuation environment, global nature of business, and is a prudent way of minimising business risk.

Could some relaxation of requirements on contributor status (such as those relating to age and employment) enable significant cost savings?

The relaxation of requirements on contributor status should produce some cost savings - but unlikely to be significant. Main benefit could be that members will leave their funds in the system longer. Such a change may also benefit women, casual workers and self employed, by providing greater flexibility.

SUPERANNUATION PROVIDERS

Could the same objectives be attained if some kinds of providers were supervised instead under other prudential legislation such as the Managed Investment Act?

The Managed Investments Act has not been operating long enough to assess its efficacy. All providers of superannuation products should be under the same supervisory regime. There should be a level playing field in terms of prudential supervision. Otherwise you open up the possibility of a new area of risk - supervisory risk - with different levels of prudential requirements being applied to different providers.

ADMINISTRATION AND ENFORCEMENT OF THE ACT

Is the regulatory oversight of superannuation trusts cost effective?

No, because there are multiple regulators, with different policy objectives, different agendas and differing approaches to regulation. The regulators do not appear to liaise very well.

Are the roles and responsibilities of the three regulators clear and consistent?

No. A recent example for the Coles Myer Superannuation Fund - a communication to members that complied with SIS requirements, was deemed to be inadequate by ASIC on the basis of one member complaint. Note, the matter took five months to resolve with ASIC.

Why has ASIC not played a more prominent role in pursuing recalcitrant trustees, where the trustee is a body corporate?

Do the arrangements result in any unnecessary regulatory overlap, duplication or uncertainty?

Yes. See example above. It illustrates how different regulators may apply different standards to the same situation.

SUPERANNUATION/RESOLUTION OF COMPLAINTS/ACT

What are the advantages and disadvantages of a statutory body relative to other dispute resolution mechanisms, such as a financial industry disputes resolution body?

Statutory body is subject to review and reporting requirements, but is subject to challenge on jurisdictional grounds. An industry body, on the other hand, could be subject to manipulation by vested interests within the industry and is likely to cost members money as the industry would have to meet the costs of supporting it.

The problem with a statutory body is it may lack resources due to inadequate funding by government.

How cost effective has the tribunal been in resolving complaints?

Very cost effective, except for delays in obtaining decisions.

Should a charge be levied on complaints to the Tribunal?

If this would result in more resources for the Tribunal - yes, provided that the charge was fairly nominal to ensure that fund members are not disadvantaged. Any fee should be set so that it represents an amount that goes towards the administrative costs of processing the claim before the Tribunal.

SUPERANNUATION (FINANCIAL ASSISTANCE FUNDING) LEVY ACT

It is appropriate to have some sort of mechanism to deal with this issue. The levy approach is preferable as it provides some degree of discretion.

The emergency fidelity fund would be just another cost to members and the investment and management of a fidelity fund would need to be supervised - resulting in more costs to the industry.