

**Review of the Superannuation Industry (Supervision) Act 1993
and Certain Other Superannuation Legislation**



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**ACTU SUBMISSION TO THE PRODUCTIVITY COMMISSION
REVIEW OF THE SUPERANNUATION INDUSTRY
(SUPERVISION) ACT 1993 AND CERTAIN OTHER
SUPERANNUATION LEGISLATION**

May 2001

INTRODUCTION

1. The ACTU seeks to make a submission on a number of the issues raised in the Commission's issues paper.
2. The ACTU submits that the superannuation system requires a comprehensive system of regulation to ensure that the retirement savings of fund members and beneficiaries are protected.
3. The importance of protecting these savings, not only for the individuals involved but for the financial system as a whole, means that risks ought not to be taken merely because of an ideological prejudice in favour of self-regulation.
4. The ACTU does not believe that the legislation restricts competition in relation to superannuation, other than by imposing obligations necessary to ensure adequate prudential operation of funds seeking to become custodians of employees' retirement savings.
5. In general, the ACTU supports the current regulatory system, while recognising that monitoring and enforcement could be improved.

OBJECTIVES OF THE LEGISLATION

6. The principal benefit of the legislation can be seen in the very few examples which can be found of misuse or collapse of superannuation funds.
7. It needs to be appreciated that superannuation is a mandatory system; the ACTU submits that it would be completely unacceptable for the Government to require compulsory superannuation contributions but fail to maintain stringent legislative requirements to ensure the safety of those funds.
8. The Australian superannuation system is well-regarded both domestically and internationally in respect of its security, transparency and performance. Australians expect Government to take responsibility for ensuring that their savings are secure and protected.
9. The fact that Australia has avoided scandals such the collapse of the superannuation funds associated with the Maxwell companies in the UK is an indication of the efficacy of our regulatory system.

COSTS OF THE LEGISLATION

10. Superannuation funds incur costs associated with the need to comply with the legislation. The degree of regulation, and so compliance costs, are higher for public offer funds.
11. In general, the ACTU submits that compliance costs are a necessary corollary of a regulatory system which ensures protection of members' funds.
12. While there may be room for reduction of costs associated with some regulatory issues, the ACTU is totally opposed to any move towards self-regulation, whether or not based on a system of industry codes.
13. Reduction in regulation, whether by relying on codes or by reducing resources available to regulators has been shown to be unsafe, whether in the finance industry or in others, such as airlines.
14. The ACTU submits that it is imperative that Australia retain its stringent system of regulation and enforcement, and that change be directed at strengthening this rather than reducing controls.
15. While relying on the Corporations Law or some other legislative scheme rather than SIS might reduce cost, it would also be likely to reduce the safety of members' savings.
16. The recent collapse of HIH demonstrates that corporate governance structures, alone, are not sufficient to ensure proper accountability and control.

TRUSTEE RULES

17. The ACTU strongly supports the requirement that funds be required to have a trustee comprising equal employer-employee representation as the responsible entity.
18. The record of these funds speaks for itself. There is no example of such a trustee with employer and union-appointed directors presiding over a fund which has collapsed or otherwise failed to meet its responsibilities in a way which has put members' benefits at risk.
19. This can be contrasted with the failure of the EPAS scheme in Queensland, where the trustee did not comprise employer and employee representatives, a factor in directors being prepared to make investments which were inappropriate and not at arms length.
20. The requirements on trustees and their directors are significant and can be onerous. Most trustee directors, particularly in industry and corporate funds, carry out these obligations because of a commitment to the funds' members – in most cases they receive either no or relatively modest remuneration.

21. The ACTU experience with employee directors is that they take their responsibilities seriously, and are generally keen to improve their knowledge and skills through formal and informal training, attendance at conferences and reading of relevant material.
22. The ACTU submits that a different form of governance of superannuation funds; for example, by professional directors, would increase costs with no benefit, and possible detriment, to the funds.
23. Representative trustee directors are either appointed by employer organisations or unions, respectively, or, in the case of some employee representative directors, are elected by the members of the fund. In both cases they are accountable, arguably more so than company directors, whose elections are dominated by large institutional directors.
24. The ACTU is opposed to licensing of directors as being unnecessary and potentially costly.

INVESTMENT RULES

25. The investment restrictions imposed by SIS are not particularly complex or stringent and, in the ACTU's view, are appropriate to funds managing members' savings collected through a mandatory scheme.
26. In particular, the rules in relation to arms length investment and acquisition of assets from members are a vital safeguard against use of funds for the benefit of directors or some members rather than members as a whole. However, although the rules are important, it is even more imperative for a stringent regime of enforcement to be maintained, to ensure that the rules are being observed.

CONCLUSION

27. The ACTU supports the maintenance of the current level of regulation of superannuation funds and of the trustee structure.
28. While compliance with the legislation does involve some cost to funds this is more than justified by the benefit it brings to members and to the financial system by ensuring security of retirement savings.
29. Alternatives to the trust structure are not justified by any evidence and would involve additional costs and possibly extra risk.