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

MAY 2001

SA Government Submission to the Productivity Commission Review of the Superannuation Industry (Supervision) Act 1993 and Certain Other Superannuation Legislation

SA Government Submission to the Productivity Commission Review of the Superannuation Industry (Supervision) Act 1993 and Certain Other Superannuation Legislation

1. INTRODUCTION

The Productivity Commission ("the Commission") has invited the South Australian Government ("the Government") to make a written submission to the Commission's review of the *Superannuation Industry (Supervision) Act 1993 (Cth)* and certain other superannuation legislation.

The Commission has advised that this review fulfils a commitment made in the Commonwealth Legislation Review Schedule to undertake National Competition Policy reviews of these Acts. It is noted that the review will not be addressing taxation issues affecting the superannuation industry, other than levies referred to in Commonwealth superannuation legislation.

The South Australian Government notes that the scope of the inquiry is as follows.

1. The Commission is to report on appropriate arrangements for regulation taking into account the following:

(a) legislation/regulation which restricts competition should be retained only if the benefits to the community as a whole outweigh the costs; and if the objectives of the legislation/regulation can be achieved only by restricting competition. Alternative approaches which may not restrict competition include quasi-regulation and self-regulation.
(b) in assessing the matters in (a), regard should be had, where relevant, to effects on the environment, welfare and equity, occupational health and safety, economic and regional development, consumer interests, the competitiveness of business including small business, and efficient allocation.
(c) the need to promote consistency between regulatory regimes and efficient regulatory administration, through improved coordination to eliminate unnecessary duplication.
(d) there should be explicit assessment of the suitability and impact of any standards referenced in the legislation, and justification of their retention if they remain as referenced standards.
(e) compliance costs and the paper work burden on small business should be reduced where feasible.

2. In making assessments in relation to the matters in 1, the Commission is to have regard to the analytical requirements for regulation assessment by the Commonwealth, including those set out in the Competition Principles Agreement. The report of the Commission should:

(a) identify the nature and magnitude of the social, environmental or other economic problem(s) that the legislation seeks to address;
(b) clarify the objectives of the legislation;
(c) identify whether, and to what extent, the legislation restricts competition;
(d) identify relevant alternatives to the legislation, including non-legislative approaches;

(e) analyse and, as far as reasonably practical, quantify the benefits, costs and overall effects of the legislation and alternatives identified in (d);
(f) identify the different groups likely to be affected by the legislation and alternatives;
(g) determine a preferred option for regulation, if any, in light of objectives set out in 3; and
(h) examine mechanisms for increasing the overall efficiency, including minimising the compliance costs and paper burden on small business, of the legislation and, where it differs, the preferred option.

3. The Commission should take account of any recent substantive studies relevant to the inquiry.

4. In undertaking the review, the Commission is to advertise nationally and consult with key interest groups and affected parties.

5. The Commonwealth Government will consider the Commission's recommendations, and the Government's response will be announced as soon as possible after the receipt of the Commission's report.

This submission provides some general information on the South Australian Government's superannuation schemes, identifies the differences between these schemes and schemes found in the private sector, explains the reasons why these differences are maintained, and how the schemes interface with the Commonwealth's superannuation legislation. South Australia does not intend to address all the issues raised in the Issues Paper.

The principal thrust of this submission is to highlight the reasons why the South Australian Government schemes established by legislation cannot comply with the provisions of the Commonwealth's *Superannuation Industry (Supervision) Act,* and therefore why an exemption from the legislation needs to be maintained, through an arrangement such as the existing Heads of Government Agreement. It should be noted that the areas of non compliance are considered to be minor.

The issue of whether there is any competitive advantage or disadvantage for the South Australian schemes exempt from the *Superannuation Industry (Supervision) Act,* is also addressed in the submission, which concludes that there is neither an advantage or disadvantage compared to private sector schemes.

The first point of contact for discussion of any issues contained in this submission should be:

Mr Deane Prior
Director, Superannuation (Policy)
Department of Treasury and Finance
GPO Box 1045
ADELAIDE SA 5001

Telephone: (08) 8226 9514 Fax: (08) 8226 9594

2. THE SOUTH AUSTRALIAN GOVERNMENT'S SUPERANNUATION ARRANGEMENTS

2.1 Background

The South Australian Government has established and maintains superannuation schemes for public servants, teachers, police officers, fire fighters, magistrates, judges, parliamentarians, governors and employees of statutory authorities.

The largest schemes are those established under various State legislation, and cover public servants, teachers, police officers, magistrates, judges, parliamentarians and governors. Some employees of public authorities are covered under the schemes established under statute, while other employees of public authorities are covered by schemes which are established under Trust Deeds which are subject to the *Superannuation Industry (Supervision) Act* and other Commonwealth superannuation laws.

2.2 The schemes under State legislation

The State Scheme

The *Superannuation Act 1988* establishes and maintains the two schemes under the Act.

The schemes are the State Pension Scheme and the State Lump Sum Scheme. Both schemes provide defined benefits.

The schemes provide entitlements for public servants, school teachers, magistrates and employees of a number of public authorities.

The *Superannuation Act* continues the Fund that was first established in 1926.

The pension scheme was closed to new entrants in 1986, and the lump sum scheme was closed to new entrants in 1994.

The number of members in the schemes as at 31 December 2000, were as follows:

Pension Scheme:

Contributors: 7,000
Preserved Pension: 2,600
Pensioners: 14,200

Lump Sum Scheme:

Contributors: 9,400
Preserved Lump Sum: 3,100

The value of funds under investment in respect of the State Scheme as at 30 June 2000, was $2,895 million.

The Triple S Scheme

The *Southern State Superannuation Act 1994* establishes and maintains the Triple S Scheme.

The Triple S Scheme is an accumulation scheme, providing the Superannuation Guarantee benefit to those employees who are "non contributors" and enhanced benefits for those members who have elected to contribute some of their own money.

The schemes provide entitlements for public servants, school teachers, magistrates and employees of a number of public authorities. This has also been the only scheme available for new police officers since 1994.

The Triple S Scheme was first established in 1994.

The numbers of members in the scheme as at 31 December 2000, was as follows:

Contributory Members: 13,600
Non Contributory Members (SG): 90,500
Preserved Benefits: 50,640

The value of funds under investment in respect of the Triple S Scheme as at 30 June 2000, was $1,471 million.

The Police Superannuation Scheme

The *Police Superannuation Act 1990* establishes and maintains the two schemes under the Act.

The schemes are the Police Pension Scheme and the Police Lump Sum Scheme. Both schemes provide defined benefits.

The *Police Superannuation Act* continues the Fund that was first established in 1917.

The pension scheme was closed to new entrants in 1990, and the lump sum scheme was closed to new entrants in 1994.

The numbers of members in the schemes as at 31 December 2000, were as follows:

Pension Scheme:

Contributors: 2,590
Preserved Pension: 120
Pensioners: 1,070

Lump Sum Scheme:

Contributors: 440
Preserved Lump Sum: 10

The value of funds under investment in respect of the Police Superannuation Scheme as at 30 June 2000, was $409 million.

The Parliamentary Superannuation Scheme

The *Parliamentary Superannuation Act 1974* establishes and maintains the two schemes under the Act for Members of Parliament.

The schemes are the old pension scheme and the new pension scheme. Both schemes provide defined benefits.

The old pension scheme is not available to new members of Parliament.

The number of members in the schemes as at 31 December 2000, were as follows:

Old Pension Scheme:

Contributors: 44
Preserved Entitlements: 2

New Pension Scheme:

Contributors: 25

The value of funds under investment in respect of the Parliamentary Superannuation Scheme as at 30 June 2000, was $103 million.

The Judges' Pensions Scheme

The *Judges' Pensions Act 1971* establishes and maintains the scheme for members of the judiciary and several other statutory office holders entitled to benefits under the judges scheme.

The scheme is a pension scheme.

The number of members in the scheme as at 31 December 2000, was 44.

The value of funds under investment in respect of the Judges' Pensions Scheme as at 30 June 2000, was $85 million.

The Governors' Pensions Scheme

The *Governors' Pensions Act 1976* provides for benefits that may be payable to a former Governor on his or her retirement.

There is currently one person receiving benefits pursuant to this Act.

2.3 Schemes subject to the SIS Act

In addition to the superannuation schemes listed under 2.2 which are all established under State legislation, there are about 40 schemes which operate in the public sector but within the regulatory framework of the SIS Act. These are schemes established by and operating within the terms and conditions of a Trust Deed.

Most of these schemes are small in nature.

All of these schemes are fully funded and the assets total around $240million.

The only concern the Government has in relation to these schemes is the fact that the provisions under the SIS Act which deal with surpluses in a defined benefit scheme need strengthening to ensure that the rights of the employer are better protected in being able to more easily utilise its share of a surplus for its own purposes.

2.4 Structures of schemes under legislation

All the schemes are structured in such a manner that the assets are owned by the Crown. This applies to both member contributions and employer contributions paid to meet the employer share of accrued liabilities.

As such, the funds which underpin the schemes are exempt from taxation on employer contributions paid into the funds, and the fund's investment earnings, by virtue of Clause 114 of the Commonwealth Constitution. The funds are referred to as "Constitutionally Protected".

Whilst the Government understands that the Commission's brief is not to consider taxation issues in its review, it is important to note that whilst the fund assets are not taxed as member benefits accrue (as under a SIS Act compliant fund), members pay an offsetting higher rate of taxation on their benefits when received.

The *Income Tax Assessment Act 1936* defines a "Constitutionally Protected" fund as one established under an Act listed in Schedule 14 of the *Income Tax Assessment Act.*

2.5 Investment of fund money

Under the State Government's superannuation arrangements for statutory schemes, the Treasurer is required to pay the money received from contributory members of the

schemes, to the relevant superannuation fund. In terms of the legislation, the Superannuation Funds Management Corporation of South Australia (known as Funds SA) is charged with the responsibility to invest the funds. The funds are invested in accordance with a strategy which must be approved by the Treasurer.

Funds SA is not a direct investor in the market place, and the funds are placed with investment managers who compete in the wholesale investment services industry for the ability to invest the funds and provide a service to Funds SA, and the stakeholders in the schemes.

In accordance with the Treasurer's direction Funds SA has arranged placement of the employers' funds with appropriate and suitable investment managers.

2.6 Regulatory and prudential controls for statutory schemes

The State Government is publicly accountable for all the schemes established under legislation.
Where a superannuation board is responsible for the administration of the scheme, the legislation in all cases requires the particular board to provide the Minister responsible for the Act with an Annual Report which must be tabled in the Parliament.

Where members contribute to the scheme and a fund is established for the purpose of receiving member contributions paid to the Treasurer, the Auditor General is required under the statute to audit the accounts and provide the Parliament with a report on the audit.

Accordingly, these statutory schemes are not only controlled by legislation, but their rules and operations are subject to the scrutiny of the Parliament. Furthermore, the schemes are subject to substantial prudential controls imposed by the State Parliament.

The legislation establishing each of these schemes also requires there to be annual reporting to members in relation to benefit entitlements and the performance of the fund.

The investment strategy for each of the funds are determined by Funds SA with copies of the plan for each financial year required to be submitted to the Treasurer and the relevant superannuation board before the commencement of the financial year to which it relates.

The administrators of the defined benefit schemes are also required by legislation to ensure that every three years there is an actuarial valuation of the scheme undertaken. The legislation also requires that the actuary report on the costs to the employer of the accruing benefits. In all cases there is a statutory requirement that a copy of the actuarial report be tabled in the Parliament.

3. THE HEADS OF GOVERNMENT AGREEMENT

3.1. Background

In general, superannuation schemes in Australia are required to be structured so as to either pay benefits in the form a pension, or a lump sum to enable the funds/schemes to comply with the provisions of the *Superannuation Industry (Supervision) Act 1993* (the SIS Act). The SIS Act sets operating standards for schemes, funds and trustees.

Most funds in Australia are therefore referred to as "complying funds". For a fund operating under the SIS Act regime, the fund must maintain its complying status or be subject to higher rates of taxation on fund income.

Most Government schemes established under legislation are in terms of the SIS Act, not subject to application of the provisions of the Act. There are Constitutional reasons as to why the SIS Act cannot regulate State Government schemes established under legislation. These Government schemes are referred to as "Exempt Public Sector Schemes", and specifically listed in Schedule 1AA of the Regulations under the SIS Act. The *Income Tax Assessment Act* treats an Exempt Public Sector Scheme as being a complying scheme for the purposes of the taxation act.

3.2. The Heads of Government Agreement

The Commonwealth Government has acknowledged that there are substantial differences between public sector schemes and those in the private sector. Public sector schemes often have complex benefit structures and are publicly accountable for their administrative effectiveness and efficiency and performance. They are controlled by legislative and other arrangements under State law, and are subject to substantial prudential controls imposed by State Governments.

These existing State controls include legislated benefits, internal and external auditing, actuarial valuations, investment powers, Crown appointment of trustees, high levels of reporting to members, the tabling of annual reports in the Parliament, appeal and review rights, and equal employee and employer representation on trustee boards. These controls are extensive and subject the fund and schemes to a significant level of prudential control, and public and government scrutiny.

In recognition of the circumstances surrounding many public sector schemes, the Commonwealth has agreed that certain State public sector schemes may appropriately be exempted from the *Superannuation Industry (Supervision) Act 1993* and the *Superannuation (Resolution of Complaints) Act 1993.*

However, in order to ensure that members of exempted public sector schemes are treated fairly and equally with their private sector counterparts, and that the Commonwealth's retirement incomes policy objectives are met in respect of scheme benefits, the States have signed a Heads of Government Agreement. The Agreement

requires the State Government to agree to conform with the principles of the Commonwealth's retirement incomes policy. The Commonwealth's retirement incomes policy is set out in very broad terms in an Attachment to the Heads of Government Agreement which the South Australian Government signed on 4 January 1996. All other State Government and Territory Governments have signed the same Agreement.

The principles of the Retirement Incomes Policy set out in the Attachment to the Agreement are as follows:

- to ensure an adequate income for all retired Australians.
- establish arrangements through Commonwealth legislation under which all Australians have the opportunity to invest working life savings into providing a higher standard of living in retirement than if workers were to rely on the age pension.

The SIS Act package of legislation provides for the prudential supervision of a range of requirements aimed at achieving the superannuation objectives which underpin the Retirement Incomes Policy. The SIS legislation includes provisions which have general applicability across all types of superannuation schemes, for example, standards relating to vesting, preservation and maintenance of accrued benefits. Other SIS provisions deal with the control and investment of the fund and its financial reporting, auditing and general solvency, which are not relevant for State Government schemes established under legislation where the benefits are in many cases, as in the South Australian example, statutory entitlements.

As the State Government schemes are exempted from SIS, the Heads of Government Agreement specifies some SIS principles which underpin the Retirement Incomes Policy. The Commonwealth has sought through the Heads of Government Agreement that the States use their best endeavours to have reflected in their statutory established schemes, the following principles:

- the superannuation funds must operate for the purpose of generating and providing genuine retirement benefits for members.
- the funds must operate within limits consistent with the SIS legislation with respect to the provision of loans and other financial assistance to members or their relatives.
- the schemes should provide adequate vesting standards to ensure that on resignation before retirement, benefits are not diminished or lost.
- benefits generated by schemes should not, as far as possible, be accessed before retirement.
- vested benefits should be able to be rolled over from one fund to another.
- accrued benefits must not be adversely affected by amendments to rules.
- members must not be able to assign or mortgage away their benefits payable on retirement.
- members must be represented on the governing bodies of superannuation funds.

- appropriate and timely information is to be provided to both new and continuing members.
- the funds must be regularly audited.
- the trustees or board of a scheme must establish and maintain appropriate internal arrangement for dealing with queries and complaints.
- the relevant Commonwealth body supervising superannuation schemes should be provided with statistical information on the State's schemes.

3.3. Can the State legislated schemes comply with the SIS legislation?

The preamble to the Heads of Government Agreement states that *"in recognition of the circumstances surrounding many public sector schemes, the Commonwealth has agreed that certain State public sector schemes may appropriately be exempted from the* Superannuation Industry (Supervision) Act 1993 *and the* Superannuation (Resolution of Complaints) Act 1993*"*.

As stated earlier, there are also Constitutional reasons for this exemption.

These "circumstances" are only very generally referred to in the Agreement as being "complex benefit structures" and the fact that they are "publicly accountable for their administrative effectiveness and efficiency and performance".

The public accountability issue has already been discussed above and there would be no disagreement that the State's legislated schemes are charged with greater accountability.

The issue of the "complex benefit structures" needs to be fully appreciated by the Productivity Commission Review.

The fact is there are benefit structures found in these schemes which are not found in private sector schemes, and within the exempt public sector schemes across Australia there are even variations between the States and between the States and the Commonwealth.

The Commission needs to appreciate that for political and industrial reasons it is simply not always possible to change these complex arrangements so as to bring them more into line with scheme structures and standards in the private sector. This is not to imply that the benefit structures are "substandard" and the Government is reluctant to improve benefits. The issue is that the differences between the structures under the schemes and the standards under SIS are in the scheme of things "minor". However, in most cases a move to strictly conform with SIS would result in long standing options and rights being removed. It is also important to note that most if not all of these schemes were well established before the standards under the SIS Act were established.

In respect to the South Australian legislative schemes the following provisions or benefit options are examples of benefit structures which preclude the schemes from being able to fully comply with the standards under SIS.

(a) Police officers are able to voluntarily retire on or after attaining the age of 50 years. The Police Association and the Government believe this option is entirely appropriate for persons working in stressful emergency services jobs. The SIS requirement is that persons must be at least 55 years of age before being able to access a retirement benefit.

(b) Members are able to take a full lump sum benefit on resigning in accordance with a Voluntary Separation Package before the age of 55 years. None of the benefit is required to be preserved until at least 55 years. The Government believes the continuation of this benefit option is essential if the Voluntary Separation Program aimed at restructuring the workforce is to be effective. The SIS standard is that any benefit that accrues after 1 July 1999 must be preserved until retirement age.

(c) Members being granted an invalidity retirement pension are not able to commute any of the pension until they attain the age of 60 years. The reason for this is that invalidity pensions are means tested against income from remunerative activities before the age of 60. The Government believes the current structure is entirely appropriate as a means to ensure that invalidity benefits are only paid in genuine circumstances, and that employer costs are controlled. The SIS standard is that pension benefits may only be commuted within 6 months of the commencement of the pension.

(d) Spouses who become entitled to a reversionary pension on the death of their member spouse partner are entitled to commute part or all of their pension within 6 months of becoming entitled to the reversionary benefit, irrespective of their age. This is a long standing option for spouses and the Government believes it is entirely appropriate that spouses have a right to commute part of their pension to a lump sum irrespective of their age when first becoming entitled to a pension in their own right. The SIS standard is that pension benefits payable to a spouse may only be commuted to a lump sum where the spouse pension commences within 10 years of the member spouse's retirement.

(e) Not all of the South Australian legislated schemes are fully funded, which is similar to the position with most other State Government schemes, including the Commonwealth schemes. The accumulation schemes are fully funded but this is not the case with the "closed schemes". In both the accumulation and closed defined benefit schemes the liabilities associated with new service are being fully funded as the liabilities accrue. This unfunded position in the closed schemes does not pose a problem for the beneficiaries as they have statutory rights to benefits when prescribed events occur. It is at the point of the emergence of a benefit entitlement that the State legislation requires the State Treasurer to make payment of the benefit. The SIS standard is that funds must satisfy a "solvency test" and contain sufficient assets to meet the payment of members' accrued benefits. In other words they are required to be fully funded.

3.4. Impact on Competition

The State Government has noted that the Commission, in making assessments in relation to the appropriateness of the current regulatory arrangements for superannuation in Australia, is required to identify whether, and to what extent, the Commonwealth superannuation legislation restricts competition.

The State Government has also reviewed its superannuation legislation against the principles of National Competition Policy. The analysis differentiated between superannuation guarantee payments by the State and payments in relation to superannuation benefits that are part of the Government's remuneration packages to employees. The latter are considered an internal matter of government and thus as stated in the review report, "the provision of certain SA Government benefits to its employees through nominated superannuation schemes is not a restriction upon competition". Further analysis was undertaken of both the administration and funds management functions in relation to the superannuation guarantee charge that is required under Commonwealth legislation.

On balance, it is considered that the benefits outweigh the costs of the current arrangements for the superannuation guarantee charge. There are net benefits to employees from current arrangements in relation to the superannuation guarantee charge through the additional cover provided at relatively low cost and reduced administration costs in general. In addition, the benefits of competition for returns are provided through the outsourcing of funds investment and management by Funds SA.

In undertaking their assessment the Commission will undoubtedly consider whether the exemption from Commonwealth superannuation laws of State superannuation schemes established under legislation, provides some degree of competitive advantage or disadvantage for those schemes. Benefits for employees under the State superannuation schemes are generally more favourable than required under SIS thus there is not a competitive advantage arising from the exemption as the State does not have lesser requirements than private sector schemes.

A threshold issue in relation to the issue of the impact on competition, is that it needs to be noted that in South Australia's situation, the older defined benefit schemes established under legislation are all closed to new entrants and the numbers of active members in these schemes is rapidly declining. The South Australian Government would submit that on the basis that the defined benefit schemes are closed to new entrants, there is no issue in relation to competition on that basis alone.

As noted above, the Triple S Scheme, which is an accumulation scheme and open to new entrants, does not have any competitive advantage or disadvantage from being exempt from the application of Commonwealth superannuation laws.

The South Australian schemes established under legislation provide eligibility for membership of those schemes to employees of the State Government. Accordingly, persons who are not employees of the State Government are not eligible to be active members of the schemes. This means that in respect of the Triple S Scheme which is

the only scheme open to new government employees, the scheme exists and operates for a specific workforce. This is no different from a very large number of corporate schemes in the private sector, where eligibility is restricted to the employer's own workforce.

The fact that the State Government does not provide choice of scheme or fund into which employees in the Triple S Scheme can have their Superannuation Guarantee contribution paid has been an issue which the National Competition Council has been unjustifiably critical. This is despite the fact that neither the SIS Act nor any other Commonwealth superannuation legislation requires employees to have a choice of fund/scheme. Under State legislation the Government's superannuation guarantee charge payments are controlled by Funds SA and, as noted earlier, the funds are owned by the Crown not the employee. Whilst Super SA undertakes administration of the superannuation scheme, the funds management function is outsourced with management of the outsourcing conducted by Funds SA. It is argued that a single fund is the most efficient and cost-effective means of managing superannuation funds because of economies of scale across the Government's entire superannuation arrangements. This provides a benefit to members by minimising administrative costs.

It is argued that lack of consumer choice is not anti-competitive in terms of the market for funds management and therefore not relevant in the context of National Competition Policy.

The exemption from the SIS Act has no bearing on the Government's policy position.

Some observers of government superannuation schemes in the private sector might argue that exemption from the SIS Act allows the State Governments to continue the practice of not funding for the accruing superannuation liabilities in respect of employees. By not funding the accruing benefit, the argument might be that this provides the State Government with a competitive advantage over other employers. The Triple S Scheme is a fully funded scheme and all employers are required to contribute to the scheme as employee benefits accrue. This dispels the argument that employers covered by State Government schemes are granted an advantage by being exempt from the SIS Act. The South Australian Government also wishes to draw the Commission's attention to the fact that the State Government has in place a program to fully fund the past service liabilities of its closed defined benefit schemes by 2034. This program also involves the "future service liabilities" under the closed schemes being fully funded as the new liabilities accrue.

Notwithstanding the fact that the Triple S Scheme is exempt from the SIS Act, members are not disadvantaged in terms of what may be regarded as member expected standards and rights in superannuation schemes. The package of benefits available to members exceeds that often available in the private sector. Members of the Triple S Scheme have available to them the following features:

- A choice of investment strategy options.

- The availability of a government financed benefit greater than the Superannuation Guarantee (currently up to 9% of salary and 10% of salary when the SG reaches 9% of salary).
- Death and disability insurance at competitive low rates.
- Income protection insurance covering disabilities for up to 18 months.
- Reasonable or low administration fees by standards of other schemes.
- An option to roll over accrued benefits to another scheme on resignation.
- The ability to roll in accrued benefits from other schemes.
- Access to a low cost and independent complaints mechanism.
- An administrator which is subject to the scrutiny of the Auditor General and the Parliament.

The South Australian Superannuation Funds Management Corporation (Funds SA) is the legislatively appointed body responsible for the investment of the funds under superannuation management. Funds SA is a "manager of managers" and in discharging its responsibilities for the investment of the superannuation monies paid into the State Government schemes, places the funds with various investment managers who compete for the actual placement of the funds. The funds are placed with the same investment managers who compete for superannuation funds throughout the whole superannuation funds management industry. Funds SA is required to pay all taxes and charges (ignoring taxes on employer contributions and fund earnings which is a separate issue, and which has no impact on Funds SA's competitive position – see point 2.3) which a similar body in the private sector would be required to pay. Accordingly, in terms of investment management, there is no competitive advantage or disadvantage provided to the South Australian superannuation funds as a result of being exempt from the SIS Act.

As a general point, it needs to be appreciated that because of the high profile that superannuation commands these days, the fact that the South Australian Government schemes established under legislation are exempt from the SIS Act in reality makes little difference from a comparability perspective. The members and the Parliament are always ensuring that the schemes remain comparable with those in the private sector whilst at the same time noting that the relative treatment of members needs to have regard to total remuneration packages not just superannuation component.

4. CONCLUDING COMMENTS

This submission has sought to provide a brief background to the reasons why the South Australian superannuation schemes established under legislation cannot be subject to the *Superannuation Industry (Supervision) Act 1993 (Cth),* and also briefly provide examples of areas in scheme structure and design which because of historical, industrial and political reasons cannot be changed to comply with the SIS Act.

It needs to be noted that in the overall scheme of things, and taking into account the fact that the old defined benefit schemes are closed to new entrants and membership is therefore declining, the areas of non compliance with the provisions of the SIS Act are considered to be "minor".

The South Australian Government accordingly considers that if the Commonwealth Government seeks to have the State Governments *comply to the best of their abilities with the Retirement Incomes Policy,* the current Heads of Government Agreement would seem to be the most appropriate medium to achieve general consensus and commitment. The State Government would submit that the Heads of Government Agreement will however, only ever be successful if the Commonwealth recognises that such a document should never attempt to be prescriptive like the SIS Act itself, but seek a commitment to the broad principles underpinning the Retirement Incomes Policy whilst at the same time recognising the sovereign status and rights of the States to effectively and efficiently manage their own workforces.

The State Government considers that as a result of the exemption from the SIS Act afforded statutory schemes, members of government schemes and the schemes themselves, are placed in neither an advantaged or disadvantaged position in a competitive sense when compared to private sector schemes and the members of those schemes.

24 April 2001.