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

The following comments have been prepared in response to the issues paper released by the Productivity Commission in March 2001 regarding a review of the *Superannuation Industry (Supervision) Act 1993* ("the SIS Act") and certain other superannuation legislation.

## Exempt Public Sector Superannuation Schemes (EPSSS)

This issues paper raises the exemption of some public sector superannuation schemes for consideration under the review.

Prior to the introduction of the SIS Act, the Commonwealth Government entered into negotiations with the States and Territory Governments regarding the appropriateness of including the various public sector superannuation schemes under the new regime. Whilst it was recognised that national standards were appropriate in relation to certain aspects of superannuation, such as security of benefits and consistency of taxation outcomes, it was also agreed that there were 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 efficiency and performance. Such schemes are controlled by legislative and other arrangements under State and Territory Law, and are subject to significant level of prudential control, and public and government scrutiny. Many of the prudential controls introduced under the SIS Act were already in place in the State and Territory legislation, such as the preservation of benefits until retirement, and the representation of members on the trustee boards.

As a result of these negotiations, the States and Territories agreed that the EPSSS would comply with the spirit of the legislation under a Heads of Government Agreement (HOGA). The HOGA details the principles of the Commonwealth's superannuation legislation that the States and Territories have undertaken to uphold in respect of EPSSS, and a statement of this commitment is published in the annual reports of the EPSSS, were applicable. In addition, another example of the Queensland Government's commitment to complying with the Commonwealth Government's legislative framework is providing members with the ability to access the Superannuation Complaints Tribunal.

In practice, EPSSS devote at least as many financial and human resources to the compliance of their superannuation schemes as do private sector superannuation schemes. The Government Superannuation Office (GSO) has a compliance officer devoted entirely to monitoring of the Queensland Government's main public sector superannuation scheme, QSuper, and its compliance with the SIS Act, and the QSuper Board of Trustees has also established an audit and compliance committee, which meets on a regular basis. In addition, the GSO monitors all of the other Queensland EPSSS to ensure compliance with the principles espoused in the HOGA.

It may seem that EPSSS receive an unfair competitive advantage due to their exemption from the SIS Act. However, in reality these schemes spend more time and incur greater costs in complying with the principles of the SIS Act than most private sector schemes, due to the level of prudential control imposed in the State and Territory legislation, and the greater public and government scrutiny.

It continues to be appropriate for State and Territory Government public sector superannuation schemes to be classified as exempt schemes for the purposes of the SIS Act.

## Trustee Structure

There has been much recent comment regarding the appropriateness of the trustee structures imposed under the SIS legislation, as a result of the failure of various public offer superannuation schemes and the collapse of the HIH insurance group. This has resulted in calls by some industry participants, including the Governor of the Reserve Bank, for the current system of equal representation for employer sponsored superannuation schemes to be replaced by a regime based on the Managed Investment Act ("the MI Act")

Historically, most of the failures in both the superannuation and the managed investment industries have occurred under the control of professional or approved trustee companies. Ironically, it was as a result of failures under the old managed investment scheme legislation, which involved a separate manager and trustee, which led to the introduction of the MI Act adopting the "sole responsible entity" model pioneered by the SIS legislation. Many of the professional trustees under the old regime acted merely in a custodial capacity and it was deemed necessary to impose the same level of responsibility on the trustees of managed investment schemes as those required of superannuation fund trustees.

In the recently publicised cases of the loss of retirement savings by two superannuation schemes, the trustee companies were approved and monitored by the regulator. Conversely, there have been no significant instances of superannuation funds failing where the trustee has involved the equal representation of members. It is apparent within the superannuation industry that since the reorganisation of the regulatory body responsible for the supervision of the industry, which saw the replacement of the Insurance and Superannuation Commission with the Australian Prudential Regulation Authority, the level of supervisory activity, and resources dedicated to superannuation, has fallen significantly.

There does not appear to be a logical argument for changing the current trustee arrangements under the SIS Act. It may, however, be appropriate to review the resources available to the regulator to ensure the proper level of supervision of superannuation fund trustees is maintained.

## Sole Purpose Test

The sole purpose test and associated standards exist to prohibit the use of concessionally taxed superannuation savings for purposes such as providing pre-retirement benefits to members, benefits to employers, or facilitating estate planning. However, the narrow interpretation of the sole purpose test has become restrictive and has not kept pace with industry development.

Many superannuation trustees consider that they have a proprietorial responsibility to offer their members a broader range of products and services, which fulfil the members retirement planning needs from "cradle to grave". It is generally recognised that most superannuation fund members would require quality financial planning services and access to non superannuation savings vehicles to fully meet their retirement planning needs. With the introduction of the superannuation surcharge, and since many more members are exceeding or likely to exceed the Reasonable Benefit Limits, superannuation is not always the most tax effective method for members to solve their retirement planning problems.

However, it is currently difficult, if not impossible for such products and services to be offered by employer sponsored superannuation funds without establishing alternative corporate structures which adds a layer of complexity and cost which is often restrictive, and could be considered anti-competitive.

Since it is not the intention to "syphon off" any of the taxation concessions generated in the superannuation funds to these additional products and services, it is suggested that the current sole purpose test model be reviewed to better reflect the role that superannuation fund trustees may play in their members' savings and retirement planning.

## Cost of Compliance and Complexity of Legislation

This issues paper raises the cost of compliance and states that the "SIS Act was intended to give added protection to superannuation savings and to promote a more efficient superannuation industry, while avoiding the imposition of unreasonable supervisory and compliance costs". However, compliance with the Commonwealth Government superannuation legislative framework has involved considerable cost for superannuation funds.

Whilst the general principles underpinning the SIS legislation are appropriate, the "grandfathering" of certain initiatives, the interaction with other Commonwealth legislation such as taxation and social security, and the distribution of regulatory functions, have all contributed to a more complex regime than was perhaps anticipated.

Having to communicate to members in a language that includes such terms as "unrestricted non-preserved" and "notional surchargeable contributions" has meant that the average person "in the street" has little comprehension of many of the aspects of their superannuation benefits. This level of complexity serves to undermine the public confidence in the superannuation industry, and is instrumental in many people spurning the taxation concessions available in superannuation in favour of savings vehicles that they can better understand.

Any review undertaken should be directed not only towards simplifying the superannuation legislative framework for superannuation funds, but more importantly for members, in addition to reducing the costs associated with the administration of superannuation.