



The Institute of
Chartered Accountants
in Australia

Submission to the Productivity Commission

Review of the Superannuation Industry (Supervision) Act 1993 and certain other Superannuation Legislation

About the Institute of Chartered Accountants in Australia

The Institute of Chartered Accountants in Australia (The Institute) is one of Australia's peak professional bodies and our members represent many of Australia's peak business and finance professionals. These members act as advisers and key decision-makers in all facets of the Superannuation industry.

The submission below represents the views of The Institute and has been prepared based on input from a variety of members in their capacity as employers, trustees, service providers and fund members.

Approach to the review

The approach taken in the preparation of this submission is to first address the recommendations of the commission and to then address the questions posed in the Requests for information.

Comprehensive review of Superannuation

The Institute has been vocal in its call for a comprehensive review of superannuation and would see many of the recommendations as suitable for inclusion in the scope of this review. We are critical however of the number of limited scope reviews that are currently underway or proposed. The resources allocated to these reviews would be better utilised as a part of a comprehensive review designed to address the broader range of issue affecting Australia's retirement incomes industry.

Recommendations

The net tangible asset requirements for approved trustees should be strengthened through legislative amendment. All approved trustees should be required to have a specified minimum amount of net tangible assets (or approved guarantee or combination thereof) regardless of their custodial arrangement. Approved trustees who use custodians should not be required to have more than the specified minimum amount. (Draft recommendation 4.1)

No specific comment

The operating capital requirements for approved trustees should be revised, through legislative amendment, so that they represent a specified proportion of an approved trustee's operating costs. (Draft recommendation 4.2)

This proposal should not be limited to a proportion of costs when the group enters the market but measured at regular intervals, ie annually, enabling those exiting the market or rationalising operations to reduce capital reserves accordingly. This will also ensure that capital adequacy is maintained over time regardless of changes to the Trustee's business.

The Australian Prudential Regulation Authority, in conjunction with relevant parties, should review the need to confine the conduct and authorisation of a compliance audit to an approved financial auditor. (Draft recommendation 4.3)

At present there is a link between the compliance and financial audit due to the issue of a single audit report. Many of the areas addressed by the compliance audit overlap with the financial audit and indeed it is envisaged that the separation of financial and compliance audit work would result in doubling up of testing as it relates to contributions, benefits and vested benefits. We believe this would lead to an increase in compliance costs and detrimental to fund members. *Many trustees already use other service providers to help establish and monitor compliance, eg compliance officers. Much of this work is relied upon and retested by the external auditor.*

The Australian Prudential Regulation Authority, in conjunction with relevant parties, should review the need to confine certain specified actuarial tasks in respect of accumulation funds to Members or Fellows of the Institute of Actuaries of Australia. (Draft recommendation 4.4)

We generally agree with the need to review this area.

Age and employment requirements governing contributor status and compulsory cashing of benefits should be simplified. In particular, consideration should be given to treating members aged between 65 and 70 in the same manner as those under 65, provided there are no substantial implications for taxation revenue. The monitoring of employment status should be clarified with a view to reducing its frequency; alternatively, responsibility to provide the required information should be placed on members, with appropriate penalties for non-compliance. (Draft recommendation 5.1)

We would support any simplification of these provisions and the clarification of existing guidance to ensure the measurement of employment and other tests are consistent and practical.

Restrictions on access to (or transfer of) superannuation benefits of bona fide non-resident short-term employees should be simplified in order to reduce compliance costs. These benefits should be able to be repatriated if they do not exceed a specified small limit. (Draft recommendation 5.2)

We would like to see this widened to enable all benefits which relate to a national of a foreign jurisdiction to be repatriated where the country enables individuals to make voluntary contributions to a regulated pension scheme which is subject to preservation rules.

Requirements governing the content of risk management statements should be simplified in order to reduce compliance costs and to sharpen the prudent management focus of trustees. The present requirement that such statements be prepared by both investment

managers and trustees for compliance audit purposes should be reviewed in order to remove any unnecessary duplication. (Draft recommendation 5.3)

We would support the recommended changes to the risk management statement (RMS) structure and we would like to see the regulators audit requirements streamlined in accordance with such requirements.

The requirements for actuarial certificates should be simplified by the Australian Prudential Regulation Authority, in consultation with the Institute of Actuaries of Australia. (Draft recommendation 5.4)

We would like to see input provided to this process by the ATO to ensure that the requirements for actuarial certificates for the purposes of claiming pension income deductions are considered. We would see this as an opportunity for alleviating the need for actuarial certificates for funds providing allocated pensions in particular self managed and small APRA funds.

In addition to these improvements, the SIS legislation should be amended to require that superannuation entities be licensed by the Australian Prudential Regulation Authority subject to specific conditions pertaining to such matters as trustee capacity, operating capital and the provision of an investment strategy. The Government and the Australian Prudential Regulation Authority should consult widely on the details of such a licensing arrangement. (Draft recommendation 7.1)

As Trustees are soon to be subjected to the licensing requirements proposed under the Financial Sector Reform Bill we would not support an additional layer of licensing.

Exempt public sector superannuation schemes

There should be no expansion of the current list of exempt public sector superannuation schemes. Consideration should be given by governments to the feasibility of closing exempt schemes which are open to new members. Any new schemes should be subject to the SIS legislation. (Draft recommendation 6.1)

We generally agree with this comment.

Other legislation under review

Resolution of complaints

The Superannuation (Resolution of Complaints) Act 1993 should be repealed, subject to some transitional arrangements. All superannuation entities regulated by the Australian Prudential Regulation Authority should be required to join a disputes resolution scheme approved by the Australian Securities and Investments Commission. This should be mandated as part of the compliance requirements of those superannuation entities. (Draft recommendation 8.1)

We do not support the removal of the Superannuation Complaints Tribunal. The scope of the tribunal is wider than that of a dispute resolution scheme and its decisions are binding on insurers with respect to Death and Total and Permanent Disability Claims.

In the event that the *Superannuation (Resolution of Complaints) Act 1993* is not repealed:
The Superannuation Complaints Tribunal should be given discretion to extend beyond one year the time limit for its decision on appeals against trustees' actions on disability payments. (Draft recommendation 8.2)

No comment

The Superannuation Complaints Tribunal should publish the names of those superannuation entities that are the subject of complaints to the Tribunal that are determined by review or arbitration. (Draft recommendation 8.3)

We do not support this recommendation as the statistics of the number of complaints received by a fund could be used to promote one fund over another. This would also not reflect the claims which are 'settled', prior to reaching arbitration. Anecdotally we are aware that some retail funds treat this as a cost benefit exercise and will settle some claims, this is an option not available to not for profit funds as all fund members would subsidise these costs.

Financing assistance in some 'failure' situations

Part 23 of the Superannuation Industry (Supervision) Act 1993 should be amended to require the Minister to table in Parliament, as soon as practicable, the Australian Prudential Regulation Authority's advice and the reasons for the Minister's decision on whether to provide financial assistance to funds which suffer significant loss from theft or fraud. (Draft recommendation 9.1)

We support this recommendation and would seek its expansion to require the criteria for this part to take effect to be clearly stated to avoid uncertainty about the provisions and when they are to be utilised.

The Occupational Superannuation Standards Regulations Application Act 1992 should be repealed. (Draft recommendation 9.2)

We support this recommendation.

Requests for information

Small and lost member accounts

Participants are invited to provide information on the extent of use of roll-over provisions in order to reduce compliance costs associated with administration of small balances and lost members. Information on other means of reducing these costs would also be welcome.

No comment

Lodgment of annual returns

Participants are invited to provide quantitative information on the costs of complying with the four-month lodgment period and to comment on the desirability or otherwise of allowing a longer lodgment period of, say, six months for small APRA funds.

We would recommend that the lodgment deadlines for small APRA funds be brought into line with Self Managed Superannuation Funds.

The problems faced by funds when meeting these deadlines have been reported to the Minister for Financial Services and APRA are and as follows:

- Logistical and resource demands, including the inability of administrators to obtain quality temporary personnel (with a four month period prescribed period they will be competing for quality resources with corporate fund administrators);

- The inability of systems to have all the required accounting and investment information available in time to allow the preparation of accurate statutory reporting;
- Tax and contributions information, together with investment valuation and distribution details for investments in unlisted trusts, in many cases will not be ready in time and/or available for external sources to allow for reporting within the reduced time. This will necessitate a greater use of estimates, which may lead to inaccuracies when compared to the final investment valuations;
- The current form of the APRA annual return is resource intensive, with large volumes of funds and a reduced time prescribed period, non-compliance risks will be increased;
- The reduced timeframe will result in the audit process commencing whilst the accounting process is still being completed, leading to further time pressures which may impact the accuracy of the year-end accounts preparation; and
- The 31 October deadline coincides with the quarterly ABN Return lodgment dates for these funds which further impacts the resource demands and the accuracy of the various returns.

This year is the first year that Trustees have been in a position to plan and seek to comply with the four month deadline. They have done so at significant cost to the funds they administer and may not meet the required deadlines.

From discussions with members in relation to the impact this deadline has had on themselves and their clients it was reported:

- one trustee has spent up to \$450,000 on temporary staff to prepare accounts
- one auditor reports that as at 9/10/01 they are awaiting information from unlisted trusts for up to 300 funds.
- trustees have incurred significant costs in providing fund members with annual reports and detailed information that the member typically provides to the trustee initially or has full access to on request. The preparation of this information is an unnecessary cost to the funds and is adversely impacting members retirement benefits.

We note that in your report APRA indicates the work could be staggered throughout the year. In relation to small funds this leads to increased work and therefore cost in relation to the audit as it creates stop start processes. These funds are invested in shares and trusts and the majority of contributions are made late in the financial year when income for the individual is known. The work in relation to these investments and contribution is therefore concentrated at year end with little advantage in performing earlier work.

Provisions defining annuities and pensions

Participants are invited to identify specific improvements to the annuity and pension provisions which would not compromise existing taxation and social security arrangements.

The Institute has been vocal in its call for a comprehensive review of superannuation and does not recommend significant changes to be undertaken other than as a result of an overall review.

Option 1 — Improve specific areas of the legislation

Participants are invited to identify which of the suggested improvements to the SIS legislation would be most beneficial or should be given priority.

The Institute has been vocal in its call for a comprehensive review of superannuation and does not recommend significant changes to be undertaken other than as a result of an overall review.

However, we draw your attention to a number of recommendations identified by the Senate Select Committee on Superannuation which would strengthen the prudential framework which funds currently operate under. We note that we are supportive of many of the recommendations identified in their recent report on auditing of superannuation funds.

Options 3 — Remove duplication of compliance

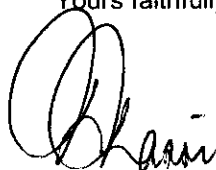
The Commission seeks further information from participants about the extent of areas of duplication between the SIS and MI Acts and about the magnitude of compliance costs which stem from that duplication. It also seeks information about other issues relating to this option, including the impact arising from added complexity and the scope for benefits to be passed on to consumers.

A number of organizations in the superannuation and funds management industries are responsible for running SIS and MIA regulated products. The existence of two somewhat different regimes does impose additional costs in relation to compliance monitoring and attending to the numerous different requirements. These additional costs could be reduced if the various compliance regimes were aligned with each other or better still replaced with a single overarching set of compliance requirements.

The Commission seeks information from participants about the magnitude of costs incurred by life insurance companies in complying with the SIS and Life Insurance Acts. It also seeks information about the extent of benefits that would flow to consumers under an option which relies on the Life Insurance Act for the prudent management and prudential supervision of life insurance companies which write superannuation business in their statutory funds.

No specific comments.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Richard Rassi', written in a cursive style.

Richard Rassi
Chairman, National Superannuation Committee
The Institute of Chartered Accountants in Australia