

The Secretary
Regulation Taskforce
PO Box 282
Belconnen ACT 2616

Email: info@regulationtaskforce.gov.au

SUBMISSION TO THE TASKFORCE ON REDUCING THE REGULATORY BURDEN ON BUSINESS

Thank you for the opportunity to make a submission to the Taskforce and I am hopeful that you are able to identify practical options to alleviate the compliance burden on business from Commonwealth Government regulation. I am very supportive of the Australian Government's determination to reduce the burden of regulatory activity.

I am a Trustee Director of a superannuation fund and it has become very evident that the level of regulation and oversight by the Australian Prudential Regulatory Authority (APRA) and the Australian Securities and Investments Commission (ASIC) has increased significantly over the last two years. I believe that the increase in the compliance burden has been as a result of some high profile events such as those surrounding HIH. Whilst it may be appropriate for some increased monitoring by the regulators, the extent of the current compliance burden is considerable and seems to burden those who are doing the right thing anyway.

Having to deal with the increased regulatory burden leads to an increased cost on businesses. Whilst Governments have required an increase in regulation and oversight, the effective duplication of regulation and agency responsibility is particularly burdensome for businesses. This duplication is an unnecessary cost and adversely impacts on productivity of businesses and therefore ultimately the Australian economy.

**Your Issue
Solution**

www.issuesmanagement.com.au

As a Trustee Director of a superannuation fund, the duplication of regulatory oversight is highlighted by the following examples:

1. Responsible officers (RO) - the definition of ROs in the Corporations Act is "in relation to a body corporate that applies for an Australian Financial Services Licence (AFSL), means an officer of the body who would perform duties in connection with the holding of the licence".

The Superannuation Industry (Supervision) Act (SIS) 1993 defines a RO in a much more specific manner, ie "(a) a director of the body or (b) a secretary of the body or (c) an executive officer of the body". The SIS definition of ROs includes a director, including an alternate or acting director, secretary or executive officer of the body corporate. An executive officer means a person, of whatever title and whether a director or not, who is concerned or takes part in the management of the body corporate. Thus a RO for AFSL purposes is a much wider and more general description whereas an APRA Registrable Superannuation Entities (RSE) RO must satisfy more "specific" roles.

The matters in relation to which a trustee may consider seeking confirmation from candidates to a RO (and director) positions are different. An APRA RO must satisfy the "fit and proper" test qualities to become an RO. The "fitness" requirement may be met on a collective basis and the "propriety" test must be met by each member of the Trustee and ROs." For APRA licensing purposes, it is the SIS Act definition that will apply, not the ASIC definition.

2. APRA and ASIC Licensing requirements regarding "adequacy of resources" -Some applicants for an RSE licence will have been granted an AFSL licence by ASIC. APRA-regulated AFSL holders are subject to APRA's prudential requirements, and the AFSL licensing process relies on APRA regulation in respect of adequate resources. (s 912A(1)(d) of the Corporations Act states that unless the licensee is regulated by APRA, it must have available adequate resources (including financial technological and human resources to provide the financial services covered by the licence and to carry out supervisory arrangements. Accordingly if there is an overlap of documentation required in the two licensing processes, applicants may provide to APRA copies of documents that have been submitted in the course of a successful AFSL application.

3. Breach reporting - the same breach may require different treatment according to which regulator is being reported to. For instance, a breach which constitutes a breach within the meaning of the Corporations Act must be reported to ASIC within

**Your Issue
Solution**

five days. To be reportable to ASIC, the breach must be "material". However the same breach may also be reportable to APRA because of a breach of the Corporations law (where there is some overlap with ASIC) or other superannuation laws, including risk management frameworks. However the breach must be reported within 14 days. There is no material requirement for APRA, as any breaches are reportable. Therefore when we consider a breach we have to consider the differing reporting requirements of both ASIC and APRA.

4. Duplication of audited financial statements (and auditors' and compliance costs) going to both APRA and ASIC. APRA has the annual return and ASIC has form FS 70.

Based on experience as a Trustee Director having to deal with these kind of duplications and different treatments, it adds to the workload of Trustee Directors, increases the compliance burden, increases the chance for error, increases staff time and business costs and for seemingly little gain for the Government and its regulatory agencies.

Having APRA and ASIC working together may be one solution to remove duplication. As reported by Anne Lampe of the Sydney Morning Herald on 4 November 2005, in her article "*Funds urged to get prices right*" she said "Australia's two main corporate regulatory bodies have jointly urged investment and superannuation fund administrators to adopt a good practice unit pricing guide to avoid costly mistakes that affect their bottom lines and reputations".

Whilst APRA and ASIC working together may be one solution, from a business efficiency point of view, it may be more appropriate to have one regulatory body asking for one set of figures or reports and importantly, as a Trustee Director, having but one key regulator to deal with.

I wish the Taskforce every success in its activities to reduce red tape and would be very happy to elaborate on this submission should that be required.

Yours sincerely

Stan Moore
Principal

15 November 2005

**Your Issue
Solution**