



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## SENATE

SELECT COMMITTEE ON SUPERANNUATION

**Reference: Superannuation (Financial Assistance Funding) Levy Amendment Bill  
2002 and related bills**

WEDNESDAY, 5 MARCH 2003

CANBERRA

BY AUTHORITY OF THE SENATE

## **INTERNET**

The Proof and Official Hansard transcripts of Senate committee hearings, some House of Representatives committee hearings and some joint committee hearings are available on the Internet. Some House of Representatives committees and some joint committees make available only Official Hansard transcripts.

The Internet address is: **<http://www.aph.gov.au/hansard>**

To search the parliamentary database, go to: **<http://search.aph.gov.au>**

**SENATE**

**SELECT COMMITTEE ON SUPERANNUATION AND FINANCIAL SERVICES**

**Wednesday, 5 March 2003**

**Members:** Senator Watson (*Chair*), Senator Sherry (*Deputy Chair*), Senators Buckland, Chapman, Cherry, Lightfoot and Wong

**Senators in attendance:** Senators Buckland, Cherry, Lightfoot, Sherry, Watson and Wong

**Terms of reference for the inquiry:**

Superannuation (Financial Assistance Funding) Levy Amendment Bill 2002 and related bills

**WITNESSES**

**BROUGHTON, Mr Aaron James, Analyst, Superannuation and Insurance Unit, Financial System Division, Department of the Treasury ..... 9**

**EVANS, Ms Joanne, Manager, Prudential Policy, Superannuation and Insurance Unit, Department of the Treasury ..... 9**

**RAY, Mr Nigel, General Manager, Financial System Division, Department of the Treasury ..... 9**

**STANHOPE, Mr Bill, Senior Policy Manager, Investment and Financial Services Association ..... 2**

**VENKATRAMANI, Mr Senthamangalam, General Manager, Diversified Institutions Division, Australian Prudential Regulation Authority..... 9**

**Committee met at 6.01 p.m.**

**CHAIR**—I declare open this public hearing of the Senate Select Committee on Superannuation into the provisions of the Superannuation (Financial Assistance Funding) Levy Amendment Bill 2002 and the Superannuation Industry (Supervision) Amendment Bill 2002. The primary purpose of the bills is to enable regulations for the imposition of a levy on superannuation funds and approved deposit funds at the end of a financial year to recoup the grants of financial assistance made to superannuation funds which suffered loss as a result of fraudulent conduct or theft during the year. Together, the two bills aim to make the imposition and administration of a levy more efficient and less burdensome on the superannuation industry.

The first bill operates in two ways. It allows the imposition of one levy on superannuation funds at the end of the financial year to recoup grants of financial assistance made to funds that have suffered losses due to fraudulent conduct or theft. The levy act currently allows for a particular levy to relate to only one grant for financial assistance. When the levy act was introduced, it was not envisaged that a large number of funds would require assistance at any one time. Secondly, it allows for a minimum and maximum to be set when imposing the levy. Without a floor or ceiling on the levy, the levy act in its current form would require some funds to pay in excess of \$400,000, far above the \$65,000 maximum the funds pay for purposes of APRA supervision, and smaller funds to pay as little as 20c, or less, which is not administratively sensible or cost effective to collect.

The Senate referred the bills to the committee on 5 February 2003 for inquiry and report by 19 March. The committee will hear first from representatives of an industry group, the Investment and Financial Services Association, and a consumer group, the Australian Consumers Association. They will be followed by representatives of a government department and an agency involved with the bill and the collection of the levy—Treasury and the Australian Prudential Regulation Authority. As you know, all the witnesses who appear before the committee are protected by parliamentary privilege with respect to the evidence they shall give. This means that witnesses are given broad protection from action in what they say. The Senate has power to protect them from any action which disadvantages them on account of evidence before the committee. The committee does prefer its hearings to be in public. However, if there are matters that you wish to discuss with the committee in private, we will consider your request.

[6.05 p.m.]

**STANHOPE, Mr Bill, Senior Policy Manager, Investment and Financial Services Association**

**CHAIR**—I welcome Mr Stanhope, representing the Investment and Financial Services Association, and I invite you to make an opening statement, which we will follow with questions.

**Mr Stanhope**—We have provided a brief submission in relation to these bills. What they do is relatively simple and, in our view, quite sensible. They provide for a sensible mechanism to administer levies to recover amounts paid under part 23 of the Superannuation Industry (Supervision) Act. IFSA supports both the single annual levy and the power to set appropriate minimum and maximum payments. Those things are obviously quite sensible and I am not sure that a lot more discussion regarding those provisions needs to be entered into by our association. We have suggested further refinement to the mechanism to achieve two things, which I will refer to specifically in a moment. Both of these things arise, I might say, from the largish number of determinations that are appearing quite quickly. A couple of years ago there were none; now there seem to be many and they are popping up on a fairly regular basis. Our members are concerned that the amounts could fluctuate year by year. That means that current members in a particular fund in a particular year might pay more or less, depending on the luck of the draw and how other compensation moneys are paid out by the government and then levied back on the industry.

Also, trustees will not have any foreknowledge at the beginning of a year as to how much compensation is going to be paid. In any given year they will not know the vagaries of how long it might take to establish whether thefts or fraud have occurred. All of those sorts of niceties will take some processing time for the minister to make a determination. To have the clarity to make a determination might take unpredictable amounts of time. That means that funds, when they are setting the fees from which they will be paying these levies, will not have any foreknowledge—certainly not at the beginning of the year. This will lead to problems in disclosing ahead of time. As you know, IFSA's position is one of full and complete disclosure. So, in order to deal with this we suggest a refinement to the process that would do two things, as I mentioned before. One is to minimise the fluctuations, and the other is to provide some foreknowledge of the annual levy amount. We have suggested spreading the levy over five years, which, we think, would achieve both of those objectives. In any year you would have to pay only 20 per cent of the levies in any previous year or years and you would have fluctuations dampened by a division of five. If, in the long run, levies plateau out at a particular amount, that mechanism might not seem necessary; but, again, funds will not know until a determination is made whether there will be a fluctuation. So it makes sense to have a damping mechanism. Obviously the funds would like to know a reasonable proportion of the levies to be paid in a particular year. If you spread it over five years they should, at the point at which they set their levy, know the cost of at least three years. I have suggested in my submission that that will give them foreknowledge of 60 per cent of the amount and, with only a less volatile 40 per cent unknown, the whole process would become easier to manage, which was our reason for making the suggestion. We are happy that the committee decides whether that should be in the legislation or simply a recommendation to the minister.

I am happy to make a general commentary and answer questions. Again, the bills themselves are relatively self-evident. I understand the committee wanted to look a little more widely into the issues and I have included in our submission comments that we made to the Superannuation Working Group headed by Don Mercer. I am happy to speak further on those comments if you wish, or to answer any questions that you might have.

**CHAIR**—You state that ISFA does not believe that superannuation investors would be well served by implementing broad compensation arrangements funded from other Australians' retirement savings. Do you have concerns, for example, that government funds do not contribute? Apart from spreading the levy over a number of years, what do you think would be a fairer system?

**Mr Stanhope**—There is an attraction in doing this, as we mentioned, from consolidated revenue. We are not advancing that as a firm position but are simply pointing out that were you to recover amounts via consolidated revenue you would get a spread across all taxpayers based on income. I grant you that superannuation is a lifetime savings arrangement not necessarily based on annual income. We have made those comments time and again about annual contribution limits. The problems with a levy system for compensation are that the people who pay may pay more than once if they are in several funds. You have the compounding problem that people who are in casual employment in several jobs might have several memberships. People with multiple memberships might tend to have multiple low balances. A levy might impact on them quite disproportionately compared to somebody who has a single balance in a large fund that exceeds the maximum levy amount. You cannot predict how evenly the levy will fall across an income distribution, which you certainly can in the case of taxation revenue. The attraction for not funding the levy from the superannuation industry itself is that it must fall on members in funds, and fund membership is uneven.

The second problem is the one that you have repeated, Senator, which is that not all people pay. That is the *prima-facie* problem that perhaps needs to be overcome. We think it is an issue. The assumption in government seems to be that all of these levies and all of the costs to the regulator will be met from the general financial sector levy. We are yet to see how licensing falls out of that, I suppose. Treasury has a discussion paper in preparation at the moment. We see those sorts of problems with a levy *per se*. We have said that we do not necessarily wish to press the issue under this reference. Those matters are not considered in the bills and the government has already made a decision not to extend the reach of part 23 compensation beyond theft and fraud.

**CHAIR**—Have you done any arithmetic in relation to the collection of the levy? For example, minimum and maximum levies are \$400 and \$66,000 respectively. Is it likely to collect the sorts of funds without making a call on consolidated revenue as a result of these changes in the bill? Does it mean that the smaller funds are going to pay a disproportionately higher fee?

**Mr Stanhope**—No. As I understand it, the consolidated revenue only comes in once the amount that would be called on from a fund would exhaust that fund. The current levy is at \$400 minimum and \$66,000 maximum. We have made long submissions to Treasury. We think that balance is inequitable in the general levy because it does not reflect the cost of supervision. But this levy is different in the sense that it is basically a repayment to the government of amounts that it has paid out to people. It is a compensation arrangement rather than a cost of

supervision arrangement. Our argument that the \$400 minimum levy in the general financial sector levies goes nowhere near the cost of supervising any superannuation fund is a comment we make time and again. We understand that there are issues about the structure of the small funds industry, particularly where you have a single large administrator and trustee running multiple funds. We have a concern about that. However, we do not see that \$400 problem applying here. Papers that have come out with the bill tend to suggest that the minimum amounts will be a lot lower than that. I must confess that that is not an area we have done any numbers on.

**Senator BUCKLAND**—You mentioned theft and fraud. It is a bit hard to draw that fine line, isn't it? At the end of the day, someone knocked the money off. There was a suggestion that it could apply to more than theft and fraud. Whether you agree or disagree with that, what were they talking about or who was talking about expanding it beyond theft and fraud?

**Mr Stanhope**—That issue was considered by the Superannuation Working Group headed by Don Mercer. Their recommendation supported it. That was not to extend. It is worth noting that the provisions for theft and fraud do not necessarily—again, I am not an expert on part 23—require a criminal process to have finished. There is a need for the minister to be satisfied, and it is a bit of an open question as to how the minister would be satisfied. There was some discussion of that during the Superannuation Working Group meetings. You will recall that that discussion occurred ahead of the determination being made about commercial nominees. At the time that discussion occurred, it was all prospective. We had not seen one of these creatures. We did not know what one was going to look like. Now we do. We are aware of 800 of them now, so they are becoming more common. But again it is a matter of the minister needing to be satisfied.

There were comments and suggestions raised during that process that it be extended to a variety of other instances of loss. We opposed those on the basis that that kind of broad compensation would fundamentally change the nature of superannuation in Australia. The experience in the ERISA in the US is that the more underwriting of those sorts of problems you get, the more you get moral hazard problems arising amongst particular funds.

**Senator BUCKLAND**—Moral hazard is a fairly broad subject, I guess, but can you just give us a couple of examples of additional things apart from theft and fraud.

**Mr Stanhope**—They are not things that IFSA had raised. We have concerns enough with—

**Senator BUCKLAND**—I understand that you have not raised these, but it has been discussed. You must know what they are talking about.

**Mr Stanhope**—We are really talking about forms of incomplete or misleading statements, whether you are talking about negligent misstatement, misstatements or that whole range of those legal standards—what constitutes misstatement—or whether you are talking about a strict failure to meet disclosure standards. Again, we think that most of those issues are best addressed by solid compliance. In the Superannuation Working Group review, we fully supported not only the notion of a compliance plan but also external audit of that compliance plan. The government has taken up that recommendation of the Don Mercer group, and we expect to see from Treasury in the next few weeks legislation showing us how some of that might work. I am not

sure which provisions will take effect when, but the commencement date for the transition period under that legislation is 1 October 2003.

If you are talking about issues of disclosure and whether or not a fund is true to the promise that it makes, which generally—in the retail sector, at least—is to invest in those investments which the consumer chose, you are really talking about compliance that the fund is true to label, that the returns that it declares and so forth are the returns that are achieved, that the investments that are advertised are the investment types that are undertaken, and that they have internal fraud management controls and all of those sorts of things that APRA is talking about in developing its licensing standards to go with that new regime. We think that all of those things together are a much more effective way of dealing with that end of the spectrum away from theft and fraud than is expanding the compensation regime.

I might also add that the whole scope of compensation under financial sector reform is still something that is in debate between policy makers and industry. It is certainly a condition of an Australian financial services licence that you have appropriate compensation measures in place. You would think that, at least in our sector, those sorts of issues are going to attract compensation from the provider, which puts the price for whatever behaviour there is squarely with the person who bears the risk.

**Senator WONG**—Could I just clarify something. I do not think anyone would argue that strong prudential supervision is better than compensation. Obviously, it is better not to incur the loss than to work out how to compensate it. But the issue of whether the current part 23 provisions are sufficient has been raised with us. Could you clarify precisely why you say it would be inappropriate to extend beyond the current provisions?

**Mr Stanhope**—The principal problem that we are raising is the problem of moral hazard. Suppose you have an environment with a group of trustees. In the case of Commercial Nominees, this was the smaller end of the market, the end of the market about which the regulator has expressed most concern. We would get down to the licensing requirements for those people that APRA is talking about. Of course, none of those things are final yet. We have not seen legislation, regulation or operating standards of any kind. Those things ought to make sure that people in those funds have the systems to make sure that those losses do not arise in the first place and that they have external audit compliance processes and audited compliance processes to make sure that what they do is what they say they do. The problem in Commercial Nominees was that the enhanced cash management trust was in fact a mushroom farm. That sort of behaviour is best addressed by compliance and by appropriate regulatory behaviour and surveillance by the regulator.

**Senator WONG**—I understand that. So your answer is that it is the issue of moral hazard.

**Mr Stanhope**—If you do not do the regulatory behaviour—the regulatory supervision—and you have broad compensation, the moral hazard risk is obviously that people will feel that, if they enter a slightly risky product, they will be compensated. You might have people feeling a little more comfortable than perhaps they should be in those parts of the market.

**Senator BUCKLAND**—But surely if they enter that risky product on the sound advice of their financial adviser or superannuation adviser they would have some right to feel that they should be compensated if someone takes a risk on their behalf.

---

**Mr Stanhope**—I am not an expert on the compensation arrangements under financial sector reform, but they will be in place for that part of the market. It is a requirement on licensees. The exact content of that requirement is still being thrashed out, but it is a requirement now—at least, as I understand it. We have given a position that we think there is a significant moral hazard problem. We have seen the evidence of that generally speaking in the US, particularly in the defined benefit market. Again, that is as we understand it; I do not have first-hand research on it. In the Australian context, to extend the reach of compensation and then fund it with a levy system that we think is already flawed—because you cannot guarantee that it is reasonably equitable in any horizontal or vertical sense—seems to us to be pretty problematic. That has been our position all the way along the line, and that is the reason we have supported better compliance and universal licensing.

**Senator WONG**—Unless Senator Buckland has any other questions, I would like to turn back to this issue that you raise regarding spreading the recovery of losses over a five-year period. Can I just clarify exactly what you mean. Are you suggesting that, if there is a call on these funds, the levy on the industry would be spread out for that particular call over a five-year period?

**Mr Stanhope**—We have a single annual levy for each year. Our suggestion is that, rather than have 100 per cent of that levy recovered in the following year or the next available levy, you spread it over five. As soon as you get to five years, you will have five previous years each time you pay a levy but you will know three of them at least at the beginning of the year and four of them at the end. Also, you will have had any annual variations damped by a factor of five.

**Senator WONG**—When do the people who suffer the loss get their compensation? Up front?

**Mr Stanhope**—We are suggesting the government would pay it. Government pays it. It is then recovered by a levy. We are suggesting that the recovery be staggered. On what we have in front of us at the moment, the fiscal cost of that is relatively small compared to the benefits. It only occurs in the first four years. By the time you get to year five, if these things are even, you will be paying pretty much the same amount. If a large levy comes along, at least funds will have the opportunity to manage that.

**CHAIR**—Have you a view on the 100 per cent or 90 per cent collection from the funds?

**Mr Stanhope**—The view we expressed to the Superannuation Working Group was that lower than 100 per cent recovery addresses the moral hazard issue. That is really as far as our view goes.

**CHAIR**—The other question is: should financial assistance be paid at all when superannuation funds have failed due to a lack of prudential supervision?

**Mr Stanhope**—That is a broader argument. We made submissions to the Productivity Commission review of cost recovery at the end of 2000, making the general argument about levies, costs and recovery. In that submission we suggested that the costs of policing type surveillance—and, certainly, the costs of recovery for regulatory failure—were perhaps best borne by government, given that it undertakes that activity. We did not explore that issue particularly in our comments to the superannuation safety review and we have not really

---

explored that Productivity Commission report here. The government certainly made no decision that it was going to go down that path and, in this case, it clearly intends to recover those costs by levies on the industry. So I think we would regard that issue as lost.

**CHAIR**—You also state that the reporting time frames in the current superannuation legislation are much less immediate than those under the Managed Investments Act provisions. Are you aware of any changes there? Have you had any consultations with the government?

**Mr Stanhope**—No, we have not yet had consultations on the content of the legislation. We are seeking those and, obviously, we are having general discussions with APRA and Treasury. IFSA has arranged for the working group doing the drafting of that to have a look at a couple of our member companies which run managed investments compliance. In one case, that was with a life office and, in another case, it was with a company that has a combined compliance program over both managed investments and superannuation. In fact, they have tried to put in an external compliance committee over their superannuation. Their belief is that that gives them better compliance. They were unable to do so, because external compliance committees are indemnified under the MIA but not under the SI(S) legislation, so those external board members would have to put their own houses on the line. So they were unable to do that.

But, in the case of Commercial Nominees—this was the comment we made to the superannuation safety review and repeated here—for something as material as becoming aware of where a cash management trust is, the timing requirement is as soon as possible and in any case no greater than three days. So the situation of APRA not being notified of a managed investment until the next annual report would not have occurred, simply mechanically, because the compliance and reporting standards for individuals engaged in any activities under the MIA are much more immediate.

**CHAIR**—Do you see any urgency in getting legislation up that would demand that?

**Mr Stanhope**—We have taken the view that the compliance requirements under superannuation need to be harmonised with the managed investments regime in order to not have costs duplicated. We regard the managed investments scheme as a more onerous requirement, for the sorts of reasons I have just mentioned: reporting time frames, requirements for external committees and the requirement for a compliance planner to have that externally audited. All of those things seem to offer better protection than waiting until there is a loss and compensating. We have supported those and we continue to support those.

**Senator BUCKLAND**—I am interested in the compensation. I think you suggested that 100 per cent compensation should not be paid to claimants in the case of theft or fraud.

**Mr Stanhope**—No, that is not quite correct. We have suggested that there is a moral hazard problem. Making compensation at less than 100 per cent does something to overcome that. There are some risks that people need to be cognisant of when they are choosing a super fund.

**Senator BUCKLAND**—An individual might decide to choose a super fund that might be subject to theft or fraud. I can understand if the superannuation client directed the financial institution to invest in a certain way or to spread his money around, as you can do, but where a person gives the money to the planner or to the fund and the fund makes decisions without

reference to the client, I have some difficulty if they are not be fully compensated. This comes down to your moral obligation or whatever. I have real difficulty with that.

**Mr Stanhope**—The planner has an obligation to give full advice to the client and to pass on the full disclosure made by the fund. In that circumstance, if that failed to occur, the planner has clearly failed in their duties. In those individual cases, clearly some—

**Senator BUCKLAND**—Failed in their duty and the client is up the creek without a paddle, so to speak, isn't he?

**Mr Stanhope**—I think there is a distinction between the problem of adviser failure and the problem of fund failure.

**Senator BUCKLAND**—In the case of theft and fraud, though?

**Mr Stanhope**—In the case of theft or fraud by an adviser, that is not covered by SI(S) legislation. That occurs with theft or fraud in the fund. There have been a number of cases of theft or fraud by advisers, some of which have made the courts recently.

**Senator BUCKLAND**—If you do not think 100 per cent is reasonable and you think something else will just help the person out, how much are you talking about?

**Mr Stanhope**—We are not greatly exercised by that. What we did was to make the point that there is a moral hazard issue and that a number less than 100 per cent does go some way to addressing that. That is all we have said. We are not particularly keen to push that issue in this context, given that is not covered by this bill. I see your point, however. There is a moral hazard issue, as we see it. This is one way to address it. Is the difference between 90 per cent and 100 per cent material? That is not an issue on which we have really expressed an opinion. We will obviously have to deal with those sorts of things in dealing with the compensation arrangements under financial sector reform in the Corporations Act. Anybody with a financial services licence will have to do so, and that is our membership.

**CHAIR**—Thank you very much, Mr Stanhope, for appearing before the committee today.

[6.31 p.m.]

**BROUGHTON, Mr Aaron James, Analyst, Superannuation and Insurance Unit, Financial System Division, Department of the Treasury**

**EVANS, Ms Joanne, Manager, Prudential Policy, Superannuation and Insurance Unit, Department of the Treasury**

**RAY, Mr Nigel, General Manager, Financial System Division, Department of the Treasury**

**VENKATRAMANI, Mr Senthamangalam, General Manager, Diversified Institutions Division, Australian Prudential Regulation Authority**

**CHAIR**—Welcome.

**Mr Venkatramani**—I appear before you representing the Australian Prudential Regulation Authority in relation to the proposed amendments to the Superannuation (Financial Assistance Funding) Levy Act 1993. APRA's role in relation to the implementation of the financial assistance levy, should the amendments be passed, is that of a service provider to the Commonwealth Treasury. APRA has been working towards ensuring that this process works smoothly and that there is no confusion between this levy and the supervisory levies imposed in accordance with the Superannuation Industry (Supervision) Act 1993. APRA is suited to providing service in view of the fact that it has access to fund data and other contact details, and deals with funds in the course of supervisory action. It has provided the Commonwealth Treasury with information in relation to the collection profile based on Treasury's requested parameters. It has also provided considerable advice in relation to the proposed administration of this levy, identifying the many practical aspects that need to be clarified as this is first time the levy will have been implemented.

APRA's position is that, while as an organisation we are willing and able to provide a billing and collection service to the Treasury, we wish to ensure that this levy is clearly distinguished as a levy to replenish the Commonwealth public account as a result of the decision to issue a grant, and is not part of a normal supervisory role within the financial sector. It is worth noting that the statutory compensation process embedded in the supervisory legislation is unique to the superannuation industry and does not apply to our other regulated industries. Once the regulations have been completed, our role will be as a service provider to the Commonwealth in issuing a levy notice to the concerned funds and collecting the revenue for deposit into the Commonwealth public account. There are a number of outstanding administrative issues that are currently being worked through between APRA and the Commonwealth Treasury, including timing, cost recovery and the collection process. Discussions in relation to these matters are continuing to progress, and we expect to actively participate in these. I thank you for the opportunity to present APRA's position.

**CHAIR**—I think APRA, ISFA and others would hope that the superannuation sector would be consulted on what the levy rates should be in any given case. Can you give assurances to the committee that adequate consultation will take place in relation to the levies?

**Mr Ray**—Yes, Senator.

**CHAIR**—Do you have any idea of how that process might work?

**Mr Ray**—We propose to consult with the industry on draft regulations.

**CHAIR**—There has been some concern that government-type funds do not contribute to the levy. Should part of the levy come out of consolidated revenue? Is it right that if a person is in a public sector fund, there is no levy?

**Mr Ray**—That is correct. The government's policy is that that is as it should be.

**CHAIR**—But neither state nor Commonwealth superannuation funds should be subject to the levy?

**Mr Ray**—That is correct.

**Senator WONG**—Mr Ray, in terms of the levies for the next financial year, do you have figures as to the total revenue that is required to be raised for the financial years ending in 2002 and 2003 to date?

**Mr Ray**—It is approximately \$11 million.

**Senator WONG**—In total?

**Mr Ray**—That is in total for 2002-03. The levies that we are raising for the 2002-03 financial year relate to amounts that were paid out in the 2001-02 financial year. The total for that is \$11.1 million. On the basis of what has been paid out so far this financial year, we are expecting the levies to be approximately \$20 million in 2003-04.

**Senator WONG**—What rate do you expect the levy to be set at?

**Mr Ray**—The requirement in the legislation is that it has to be less than 0.05 per cent of assets.

**Senator WONG**—Yes, I am aware of that.

**Mr Ray**—There are a set of simultaneous equations. The proposal that you are considering has a minimum and a maximum. Obviously once you set the minimum and the maximum and you have the quantum, the rate drops out. They are simultaneous equations so it will depend on the minimum and maximum thresholds.

**Senator WONG**—That was going to be my next question and we can ask it that way around if it is easier for you. Have you considered what the likely maximum and minimum levels are likely to be?

**Mr Ray**—That decision has not been settled yet and that is a matter on which we would consult the industry.

---

**Senator WONG**—Can you give us some indication? It is obviously a matter that has been raised.

**Mr Ray**—I think that it is not unreasonable to assume that the maximum is going to be less than the maximum for the supervisory levy. The supervisory levies raise approximately \$30 million. Given that we are raising \$11 million, it would seem odd to have a maximum higher than the maximum for the supervisory levy.

**CHAIR**—How much are you raising?

**Mr Ray**—The supervisory levies raise about \$30 million from superannuation funds.

**CHAIR**—Yes, but what are you planning to raise?

**Mr Ray**—In this case, \$11 million.

**Senator WONG**—It is \$11 million and \$20 million in 2003-04 as currently projected.

**CHAIR**—Haven't they paid out more than \$11 million at the moment?

**Mr Ray**—The way it works is that the levies for the 2002-03 year relate to what was paid out in the 2001-02 year. In the 2001-02 year, the amount paid out under part 23 was \$11.1 million.

**Senator WONG**—Are you able to give me some sort of percentage figure that you might be looking at as a maximum?

**Mr Ray**—As a rate?

**Senator WONG**—Yes.

**Mr Ray**—The maximum is 0.05 per cent; it cannot go above that.

**Senator WONG**—But the proposed bill sets maximum and minimum levies. Has Treasury done any work on those?

**Mr Ray**—It is all just basic arithmetic.

**Senator WONG**—I am not very good at that. Perhaps you could assist me.

**Mr Ray**—Given the population of funds, we have done work on what combinations of maximum and minimum and rate look like, but at this stage we have not put options to government on which option they might choose.

**Senator WONG**—I am not suggesting that you need to disclose what advice you may or may not have put, but it would be good to get some sort of feel about what kind of maximum and minimum we might be looking at.

**Mr Ray**—I am not sure that I can really add to my answer, Senator.

---

**Senator WONG**—You haven't answered it.

**Mr Ray**—The issue is a decision for my minister and she has not yet made it.

**CHAIR**—So there will be two levy payments? There will be a levy payment for 2001-02 for amounts that the Commonwealth has paid out and then the industry can expect another levy next year.

**Mr Ray**—Correct.

**CHAIR**—If any further amounts are paid out, there will be another levy the following year?

**Mr Ray**—Correct.

**Senator WONG**—So that is how it works.

**CHAIR**—So the industry is on notice for that. The only difficulty is that it would appear from the arithmetic that the larger organisations may in a sense be paying less compared to the smaller funds because of the new formula limiting the amount of the levy to \$66,000.

**Mr Ray**—That is correct.

**CHAIR**—The assets under management figure would result in a higher collection from the bigger companies.

**Mr Ray**—That is correct, and that is in the—

**CHAIR**—That means that the smaller companies are going to carry, per capita, a bigger financial burden than the larger companies.

**Mr Ray**—That is correct and that is in the RIS that was included in the explanatory memorandum.

**CHAIR**—Yes.

**Mr Ray**—On the other hand, as the existing law would work, we would need to collect a large number of very small amounts from small companies. There would be significant compliance costs associated with that.

**CHAIR**—I can understand a certain amount of rounding to make it sensible—\$50 or \$100 or something like that, rather than 20c. Just looking at the arithmetic, what are the smaller funds going to have to pay approximately? Can you give us some guidance?

**Mr Ray**—If, for example—and this is only an example—the minimum threshold was set at \$100, which is one of the numbers that you suggested, that would mean that 8,000 funds would pay the minimum, roughly.

**CHAIR**—Or even nothing?

**Mr Ray**—No, they would pay the minimum, \$100.

**Senator WONG**—Sorry, I missed the first part of your answer there, Mr Ray.

**Mr Ray**—If one of Senator Watson's numbers, \$100, was the minimum threshold, I think about 8,000 funds would pay the minimum amount.

**CHAIR**—I was suggesting it would be an exemption for the very small funds. That is the way I was interpreting it.

**Senator CHERRY**—How many would pay full funding if that was the minimum?

**Senator WONG**—A \$100 minimum would mean 8,000 funds, wouldn't it?

**Mr Ray**—It is about 8,000.

**Senator WONG**—At both \$100 and \$400?

**Mr Ray**—Yes.

**CHAIR**—Would it not be preferable to have a threshold for the very small ones not to pay anything, in terms of red tape, equity and that sort of thing?

**Mr Ray**—As you are aware, so far the members of funds that have received assistance under part 23 have been members of small superannuation funds.

**Senator BUCKLAND**—Do I take it that they are at greater risk with a smaller fund? Senator Watson was suggesting that you give them an exemption; but in fact the smaller funds could be the ones who would be at more risk.

**Mr Ray**—That is really a judgment for someone other than me. It is more for APRA, I think.

**Mr Venkatramani**—There are several ways in which you can approach this. In a conceptual sense, the most equitable way would be if you can somehow relate it to the members' balances—not the number of members but what the members have. Some of the smaller funds have higher average per capita annual balances than some of the larger funds. In fact, if you go to the industry funds, the balances would be quite small. Therefore, we have a range of options here and we need to work through to something which is reasonable. What we would consider is that once the fund gets levied in accordance with what Mr Ray has said, or in accordance with whatever the formula throws out and the minister decides, the fund receives that levy and, as far as the fund is concerned, it is an impost for the fund. Under SIS the fund trustee has an obligation to pass on costs in an equitable manner. Within the fund, if there are people with larger balances and smaller balances, one would think it is for the trustee to decide then how to apportion this particular cost along with all other costs of the fund. We would suggest and we would in fact expect that trustees would have a reasonably robust and equitable mechanism for passing it on. The ultimate test would be how this is worked through in practice. When a fund receives, say, a \$10,000 levy notice, what does it do with it? If it is a \$20 million fund or something like that, then \$10,000 may not be a large amount along with all the other

administrative costs, taxes, contribution charges et cetera. It will be equitably spread. The requirements of SIS will take care of it in practice.

**CHAIR**—We have to go for a division. I suspend the hearing of the committee.

**Proceedings suspended from 6.50 p.m. to 7.00 p.m.**

**CHAIR**—Mr Ray, do you wish to clarify a point?

**Mr Ray**—I want to clarify that, under the provisions, the levy will not apply to those funds that have had determinations made in respect of them.

**CHAIR**—So they will not pay the levy?

**Mr Ray**—That is correct.

**Senator BUCKLAND**—I understand that at the time of the first ministerial determinations, the acting trustee had not finalised the fees for some funds. Consequently, while the members of these funds have been compensated for capital losses, they are yet to be compensated for acting trustee fees of some \$10,000 or more. What procedure has Treasury adopted in the circumstances once fees are finalised?

**Mr Ray**—The compensation that has been paid covers fees that were charged before the determination was made. We are aware that some fees have been charged after the determination has been made. Under the act, the trustees would be eligible to apply for further compensation for another determination in relation to those fees.

**Senator BUCKLAND**—So there will be a further application for those fees?

**Mr Ray**—That would be the appropriate process under the act and then the minister would need to make a decision on all those sorts of things.

**Senator BUCKLAND**—And Treasury would allow the fees to be appended to the earlier determinations; is that right?

**Mr Ray**—No, the minister would need to make a new determination and, obviously, the standard conditions would need to apply.

**Senator CHERRY**—I have a couple of questions about your simultaneous equations, which I am very excited about. Presumably, the levy is set at a percentage figure that you ultimately determine; would that be right?

**Mr Ray**—Correct.

**Senator CHERRY**—So essentially, you divide the \$20 million that you need to collect by the total assets under management and that is broadly your figure with your maximums and minimums to tweak it at the side?

**Mr Ray**—Yes, but we would probably set the minimum and the maximum and then the rate drops out.

**Senator CHERRY**—Right. Are the minimum and the maximum set by the regulation or do you change those as well? The \$400 and the \$66,000 are just put into your model, aren't they?

**Mr Ray**—The \$400 and \$66,000 are in the supervisory levies at the moment. Whatever is the minimum and maximum which has not been set will be set in the regulations.

**Senator CHERRY**—Each year?

**Mr Ray**—Or ongoing.

**Senator CHERRY**—The arguments by an earlier witness and in two submissions that the levy should be set over a period of years: what is the department's response to that—whether it be over a five-year period or a three-year period?

**Mr Ray**—I guess the short answer is that the government's policy is reflected in the provisions before you and that is that the levy is raised on a year by year basis. Obviously, I do not want to get into the policy issue, but the longer answer would be that one of the arguments for having a minimum is administrative simplicity. A lot of that would be lost were we to go to a five-year averaging for those minimum amounts.

**Senator CHERRY**—As I understand it, you say the levy cannot exceed the supervisory levy?

**Mr Ray**—No, the levy rate cannot exceed 0.05 per cent under the act. What I said in answer to Senator Wong earlier was that it would be reasonable, we would think, to assume that the maximum would not be higher than the maximum under the supervisory levy in an environment in which we are raising one-third of the amount.

**Senator CHERRY**—There are also some submissions to us just generally on the issue of delay and uncertainty in the payment of compensation. Whilst that it is not the subject of this bill, I would be interested to see what auditing or performance review measures you have in place to look at those issues?

**Mr Ray**—The government has announced that it is going to review the operation of part 23. That was a recommendation to the Superannuation Working Group, not least because the government has been concerned about the non-pecuniary costs on those who suffered losses caused by the way the process works. That is all subject to review.

**Senator CHERRY**—Thank you.

**Senator WONG**—I will briefly go back to the spreading of the levy over five years. Would the only objection Treasury would raise in relation to that be the administrative issues, or do you have other issues that you would raise to such a proposal?

**Mr Ray**—I would probably prefer to go back to my short answer, which is that the government's policy is a year by year approach. I was just saying that—

**Senator WONG**—I appreciate that but, if that is an issue that is raised, we would like to know if that was a bad idea from your perspective. Is there some financial issue around that spread—

**Mr Ray**—Obviously, there is a financial question for the Commonwealth because the Commonwealth pays the compensation up front and then collects the levy in arrears.

**Senator WONG**—Obviously, but other than that you do not have anything further to add on that?

**Mr Ray**—I have nothing further to add.

**Senator WONG**—Mr Venkatramani, as we were leaving for the division, you gave your views about the importance of trustees paying the levy or applying it in an equitable way across the membership of the fund. Is that an issue that is regulated, or proposed to be regulated, or is it simply an issue for the trustees to deal with in accordance with their fiduciary duties?

**Mr Venkatramani**—The issue of paying all expenses and, indeed, all income in an equitable fashion across members is something which you would look at normally whenever you do a fund review. This is only one specific cost. In the normal course of running a fund, on an annual basis there is the issue of allocating interest as well as various taxes and expenses. We would be asking trustees what their policies were and how would they approach it. There could be different classes of members where different policies could apply in order to preserve equity. The point I was making was that, once the levy is paid by the fund, the fund would have to deal with it like any other impost on the fund. That process is governed by general trust law as well as section 52. When APRA reviews the fund, it would specifically be looking at the way trustees apportion costs and income.

**Senator WONG**—Under the existing common law and section 52?

**Mr Venkatramani**—Under the existing trust law as well as SIS.

**Senator SHERRY**—Mr Ray, in response to Senator Cherry, you touched on the Superannuation Working Group report, and that the review has commenced. Will it deal with the following issues: firstly, how to streamline the process for assessing applications so as to avoid a repeat of the 15-month wait between the first applications arising out of CNAL and the first ministerial determination? Will it deal with that issue?

**Mr Ray**—It will deal with part 23 of the SI(S) Act. The processes that are required under that act would be subject to review.

**Senator SHERRY**—So yes. Would it deal with the definition of eligible loss? Should it be expanded beyond fraudulent conduct or theft, which is the current definition?

**Mr Ray**—That definition is in part 23.

**Senator SHERRY**—Okay. If part 23 is up for review, it can deal with that issue?

**Mr Ray**—The government's announcement is that it will review part 23 in its entirety.

**Senator SHERRY**—So that is in part 23. What about 100 per cent compensation payment of eligible losses? Is that in part 23?

**Mr Ray**—Part 23 says that the compensation cannot be greater than 100 per cent and that it is a matter for the minister to determine what proportion of the eligible loss is compensated for. As you know, the Wallis inquiry recommended that the proportion be 80 per cent and the government, in its response to Wallis, initially adopted that. In relation to the more recent considerations, when the part has actually been applied, it moved to 90 per cent.

**Senator SHERRY**—On that point about the adoption of the 80 per cent, if my memory serves me correctly the government attempted to legislate for 80 per cent and that was rejected by the Senate.

**Mr Ray**—You were probably there, Senator, so I defer to your knowledge. The 90 per cent is pretty consistent with international practice.

**Senator SHERRY**—Nevertheless, the act provides for 100 per cent compensation, doesn't it?

**Mr Ray**—No.

**Senator SHERRY**—Up to 100 per cent.

**Mr Ray**—The act provides for no more than 100 per cent.

**Senator SHERRY**—So up to 100 per cent compensation can be paid, can't it?

**Mr Ray**—Under the provisions of the act it could be, but the government's policy, for reasons with which you are well familiar and I do not need to go into, is to pay something less than 100c in the dollar.

**Senator SHERRY**—I do not agree with that, but that is the current government's policy.

**Mr Ray**—It was the previous government's policy, too, I think.

**Senator SHERRY**—They never had to make a payment, so how could it have been policy? It was 100 per cent. Did APRA make a recommendation to the government as to the quantum of compensation?

**CHAIR**—That is policy.

**Mr Venkatramani**—APRA provided a range of modelling assumptions and calculations to the government, recognising that ultimately under the act it is for the minister to make the determination within the parameters set in the act. We did a lot of modelling work—the whole

---

range, from zero to 100 per cent—to see what it would take. We also provided input on some of the relevant issues in relation to compensation, because APRA is aware that superannuation is one of the industries we supervise and similar compensation arrangements do not apply, for example, for bank depositor losses or other losses. We believe that, for modelling and other issues, the position taken—namely, that there should be some kind of co-contribution—is appropriate, but we did provide a whole range for the minister to make the determination.

**Senator SHERRY**—You said that there is not the equivalent compensation in other areas—they are not your exact words, but that is what you were saying. Superannuation is compulsory; it is for retirement. There are special circumstances involving superannuation—that is correct, isn't it?

**Mr Venkatramani**—Yes.

**Mr Ray**—Yes, and that is why part 23 is there.

**Senator SHERRY**—In the inquiry, the working group, is the issue of extending protection to post-retirement products being considered at all?

**Mr Ray**—In the review of part 23?

**Senator SHERRY**—Yes.

**Mr Ray**—I think the easiest way to answer that is to say that, as I understand part 23, those products are not covered by part 23.

**Senator SHERRY**—Correct—that is my understanding.

**Mr Ray**—When the government has reviews, people make submissions on all sorts of things, so it is possible that people could make submissions on that topic, but at this stage the government's commitment is to review part 23. I guess the scope of part 23—

**Senator SHERRY**—Exactly. The scope of part 23 would be extended.

**Mr Ray**—Yes, it is part of the review.

**Senator SHERRY**—The issue of pre-retirement superannuation savings being covered for compensation and the issue of post-retirement superannuation savings not being covered for compensation—do you see a contradiction or an inconsistency?

**Mr Ray**—I do not know that it is for me to have a view on whether there is an inconsistency, but I can understand the point of your question.

**Senator SHERRY**—Does APRA have a view on the lack of consistency in that pre-retirement superannuation is covered for compensation and post-retirement is not?

**Mr Venkatramani**—I would defer to the review which is being conducted by the government, but there are a couple of issues which are worth considering. One, on post-

---

retirement, is that it would only affect people who take retirement in the form of pension streams, such as allocated pensions. If you take it in a lump sum, you are out of the system. The current system allows for encouraging people to take post-retirement in an income stream rather than in a lump sum form—firstly, in the form of an increased RBL, plus additional tax concessions, because it moves into a tax-free regime. Also, in regard to an earlier point I made, if a levy is made into your fund which has both accumulation phase members and post-retirement phase members, we would expect the trustees to take that into account in apportioning any levy paid by the fund so that those people who do not have protection normally would not have to wear the costs of any such protection. So there are a couple of considerations, but ultimately it is for the review to consider these points.

**Senator SHERRY**—Just to put this whole issue in some perspective, what is the total amount in terms of levy across the superannuation industry that we are likely to look at?

**Mr Ray**—On this levy?

**Senator SHERRY**—Yes, approximately, for CNAL.

**Mr Ray**—You were not here, Senator, but for the 2002-03 financial year the total levy is \$11.1 million. For the 2003-04 year, which relates to determinations in the current financial year—which obviously is not finished—at this stage it looks like about \$20 million.

**Senator SHERRY**—So approximately it is \$31.1 million.

**Mr Ray**—Over two years.

**Senator SHERRY**—Is this the first time the levy mechanism has been used?

**Mr Ray**—Yes.

**Senator SHERRY**—So that is \$31.1 million over about 10 years?

**Mr Ray**—Yes, over 10 years.

**Senator SHERRY**—What is the total amount of assets in superannuation funds at the present time? I know that it has gone down since I last looked.

**Mr Venkatramani**—It is \$500-odd billion.

**Mr Ray**—It is between \$500 billion and \$600 billion.

**Mr Venkatramani**—It is \$550 billion, on average.

**Senator SHERRY**—So, as of today, it is \$31 million in 10 years out of \$550 billion. It is a very small percentage, isn't it?

**Mr Ray**—Yes.

**Mr Venkatramani**—Yes, it is.

**Senator WONG**—Going back to the minimum and maximum levies—I understand your answers earlier, Mr Ray—you have obviously done some modelling on how many funds would be likely to fall into the minimum levy range. You said, for example, if it were set at \$400 it would be about 8,000. Is that right?

**Mr Ray**—Correct.

**Senator WONG**—How many would be at the maximum? With the ranges of maximum levies you have looked at, what sort of numbers of funds are we looking at falling there in the maximum?

**Mr Ray**—It depends on where you set the maximum.

**Senator WONG**—Can you tell me the various places you set it and how many people are in it? We could do it that way.

**Mr Ray**—It is in the hundreds. At any conceivable level of the maximum, I think it would be fair to say that it is going to be in the hundreds and not in the thousands.

**Senator WONG**—How many does that leave in between?

**Mr Ray**—There are about 10,000 in the population.

**Senator WONG**—So it will be very few. On your projected figures, the vast majority will be on the minimum.

**Mr Ray**—Correct. That is because of the distribution of the size of funds.

**Senator SHERRY**—Will the levy also apply to children's superannuation accounts?

**Mr Ray**—The levy will be on funds.

**Senator SHERRY**—Will that include the kiddies' accounts in those funds?

**Mr Ray**—The levy will be on funds and, as my colleague has explained, how they allocate it will be up to the trustees.

**Senator SHERRY**—So the kiddies might get hit as well—dear, oh dear—or the one kiddie might get hit.

**CHAIR**—Members of funds will. I wish to take the opportunity of welcoming to this public hearing Ruby, Senator Buckland's parliamentary intern from Tokyo. We hope that you have learned something. Thank you also to Senator Buckland for taking on parliamentary interns and giving them some insight into how the parliamentary committee system works; well done. That concludes our hearings today. I thank all witnesses who have appeared before the committee.

**Committee adjourned at 7.20 p.m.**