

Chapter 1

Introduction

Background

1.1 On 30 June 2006 the committee resolved to inquire into the structure and operation of the *Superannuation Industry (Supervision) Act 1993* and the superannuation industry to ensure that it provides an efficient, effective and safe regulatory structure for the management of superannuation funds. The committee agreed that it would examine the following terms of reference:

- (a) Whether uniform capital requirements should apply to trustees.
- (b) Whether all trustees should be required to be public companies.
- (c) The relevance of Australian Prudential Regulation Authority standards.
- (d) The role of advice in superannuation.
- (e) The meaning of member investment choice.
- (f) The responsibility of the trustee in a member investment choice situation.
- (g) The reasons for the growth in self managed superannuation funds.
- (h) The demise of defined benefit funds and the use of accumulation funds as the industry standard fund.
- (i) Cost of compliance.
- (j) The appropriateness of the funding arrangements for prudential regulation.
- (k) Whether promotional advertising should be a cost to a fund and, therefore, to its members.
- (l) The meaning of the concepts “not for profit” and “all profits go to members.”
- (m) Benchmarking Australia against international practice and experience.
- (n) Level of compensation in the event of theft, fraud and employer insolvency.
- (o) Any other relevant matters.

Conduct of the inquiry

1.2 The inquiry was advertised in the *Australian* newspaper and on the internet. The committee invited written submissions from a wide range of industry stakeholders, government regulators, non-government organisations and academics. Details of the inquiry were placed on the committee's website.

1.3 Early during the inquiry, the committee requested the Parliamentary Library to prepare a research paper on term of reference 13, benchmarking Australia against international practice and experience. The paper that was issued in May 2007 provided a detailed comparison of relevant features of the retirement income systems of Australia, the United Kingdom and the United States. The committee agreed to make the paper publicly available on the inquiry website.

1.4 The committee held six public hearings: in Sydney on 24 October 2006 and 7 March 2007; in Melbourne on 25 October 2006 and 5 and 6 March 2007; and in Canberra on 20 November 2006. A list of witnesses who appeared at the hearings is at Appendix 2. Copies of the Hansard transcripts are available through the internet at <http://www.aph.gov.au/hansard>.

Committee's approach

1.5 The committee strongly endorses the view that the regulatory structure for superannuation should promote a viable industry that encourages fair competition to enable fund members to maximise their retirement savings in as safe and secure environment as possible. Above all, it should provide for an efficient and effective environment for investment and management of members' funds. This is why one of the committee's main objectives was to examine whether the current legislative and regulatory structures enable fund members to maximise their superannuation savings. As a leading publishing and research firm operating in the superannuation industry told the committee:

Superannuation has fundamentally promised that, when I retire, there is going to be a big fat cheque waiting for me with lots of zeros on the end, so I have to be able to trust that the guys are going to be there to mail me that cheque.¹

1.6 A major issue underpinning the inquiry's terms of reference is whether the regulatory framework for superannuation is adequate for the current needs of industry and the demands made by consumers. The committee believes that the legislation needs to be as clear, concise and effective as possible and fit the current policy environment for superannuation. Yet during the inquiry concerns were raised about the complexity of the SIS legislation and its ongoing relevance to an industry that is experiencing fundamental change. The introduction of Super Choice and member investment choice has shifted the responsibility for superannuation from employers to employees and commercial superannuation providers. The committee notes that there is now a much greater focus on individuals taking responsibility for their own retirement savings.

1.7 The committee agrees with the Investment and Financial Services Association (IFSA) that choice of fund legislation and licensing requirements for superannuation

1 Mr Alex Dunnin, Executive Director, Rainmaker Information Pty Ltd, *Committee Hansard*, 24 October, Sydney, 2006, p. 77.

funds have changed how the superannuation system operates, creating an openly competitive environment for all superannuation providers and placing more demands on the legislative, regulatory and policy framework. These factors, together with increased fund disclosure and member responsibility for fund and investment selection, provide a regulatory picture that is very different from the one established in the early 1990s:

The SIS Act has not been the subject of any significant review since its enactment, and the Parliament should ensure that the law and its administration is not out of step with current day requirements and developments, including technological and market developments over the last 12 years. While we consider that the current structural requirements for the regulation of superannuation are solid, the laws have not kept pace with industry changes and consumer demands. Maintaining the current laws may challenge the efficiency and effectiveness of the superannuation market.²

1.8 It is in the context of individual choice that refinements to financial services reform (FSR) legislation, that have focused on product disclosure, transparency and consumer protection, have become increasingly important. Yet the industry is concerned that FSR has added another layer of compliance obligations on funds and associated entities without sufficient compensating market or consumer benefits, giving rise to calls for simplification and further refinements. The committee heard how the level of regulation and red tape for product disclosure applying to all funds under FSR legislation is considerably greater than it was ten years ago.³ The particular concern with FSR mainly related to the lengthy, complex and generally unreadable disclosure documentation that is issued to consumers.

Report structure and chapter summary

1.9 The report consists of 8 chapters. Chapter 2 provides background on the regulation of the superannuation industry and describes industry trends that have resulted in total superannuation savings in Australia exceeding the \$1 trillion mark. Chapter 3 examines issues that relate to the reporting requirements of superannuation funds. These include whether promotional advertising complies with the sole purpose test and whether funds are properly disclosing to their members expenditure on advertising; use of the term 'not for profit' by industry funds in the context of third party transactions with service providers and the propriety and transparency of these relationships; and complaints about the inefficiencies and cost associated with regulatory overlap.

1.10 Chapter 4 addresses the issue of member investment choice and the debate over the role of the trustee and APRA's interpretation of law and policy in this area.

2 Mr Richard Gilbert, Chief Executive Officer, IFSA, *Committee Hansard*, 24 October 2006, Sydney, p. 90.

3 Mr Frank Gullone, Chief Executive Officer, Superpartners, *Committee Hansard*, 25 October 2006, Melbourne, p. 18.

Chapter 5 examines issues under the umbrella theme of safeguarding superannuation savings. These include capital adequacy, uniform capital requirements and unit pricing; the relevance of APRA standards; current funding arrangements for prudential regulation; compensation arrangements in the event of theft and fraud and employer insolvency; portability and exit fees; and 'lost' superannuation.

1.11 Chapters 6 and 7 address arguably the central issue raised in evidence during the inquiry: the role of financial advice. Chapter 6 examines legislative barriers to cost-effective advice and how to overcome them in order to find a balance between consumer protection and accessibility of advice. Chapter 7 continues the theme of financial advice by examining how advisers are remunerated, especially concerns about conflicts of interest associated with commission-based remuneration models. It also discusses the important role of education and financial literacy programs in enabling both existing and new fund members to navigate the complex superannuation environment.

1.12 Chapter 8 examines the reasons for growth in the number of self-managed superannuation funds and issues relating to the administration, regulation and future viability of this industry sector.

Acknowledgements

1.13 The committee thanks those organisations and individuals who made submissions to the inquiry, gave evidence at the public hearings and provided the committee with additional information and responses to questions taken on notice. The committee also thanks Mr Leslie Nielson from the Parliamentary Library for preparing a detailed research paper and assisting the committee in its deliberations on term of reference 13.