



A U S T R A L I A N C H A M B E R
O F C O M M E R C E A N D I N D U S T R Y

**Structure and operation of the
Superannuation Industry**

**ACCI Submission to
the Parliamentary Joint
Committee on Corporations
and Financial Services**

September 2006



L E A D I N G A U S T R A L I A N B U S I N E S S

1. ABOUT ACCI

The Australian Chamber of Commerce and Industry (ACCI) has been the peak council of Australian business associations for over 100 years.

ACCI is Australia's largest and most representative business association.

Through our membership, ACCI represents over 350,000 businesses nationwide, including:

- Australia's top 100 companies
- Over 55,000 medium sized enterprises employing 20 to 100 people
- Over 280,000 smaller enterprises employing less than 20 people

These businesses collectively employ over 4 million people.

ACCI's 37 member organisations include the State and Territory Chambers of Commerce and Australia's leading national employer and industry associations. Our members represent all major sectors of Australian industry including small employers and sole traders as well as medium and larger businesses.

A list of ACCI members is attached.

2. SUMMARY

ACCI welcomes the opportunity to make a submission to this inquiry.

ACCI represents a number of business associations that are trustees of major industry superannuation funds. This submission particularly represents the concerns of these trustees.

ACCI considers that the current regulation of trustees should continue.

Excessive capital requirements should not be imposed upon trustees, because of the different nature of trustees and because they would be largely ineffective in dealing with any concerns about systemic failure. In addition, trustees of industry funds are subject to specific and detailed regulation under industrial relations rules, meaning the argument for additional superannuation regulations is weak.

Requiring trustees to become public companies would serve no useful purpose. It would impose significant costs on trustees with no perceivable benefit.

A significant number of concerns have been raised over regulation of advice. ACCI is particularly concerned that it is very hard for many businesses, particularly small businesses, to distinguish between information and advice provided to employees. ACCI supports reduced regulation of advice including exemptions for employers acting in good faith.

Superannuation choice of fund should promote investment choice. Further regulations are not warranted at this stage, but any regulatory barriers to investment choice should be removed.

The costs of complying with the 9 percent superannuation guarantee are significant for employers. This compulsory impost should not be increased and increases in exemption thresholds should be implemented.

There is insufficient data on the loss of superannuation entitlements due to employer insolvency. Further research is required. At this stage, we do not support the extension of the Government's GEERS scheme to provide for unpaid superannuation contributions.

3. BACKGROUND

The Parliamentary Joint Committee on Corporations and Financial Services is conducting an inquiry into the structure and operation of the superannuation industry.

3.1.1. Terms of reference

The terms of reference of the inquiry are:

The Committee will 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, with particular reference to:

1. Whether uniform capital requirements should apply to trustees.
2. Whether all trustees should be required to be public companies.
3. The relevance of Australian Prudential Regulation Authority standards.
4. The role of advice in superannuation.
5. The meaning of member investment choice.
6. The responsibility of the trustee in a member investment choice situation.
7. The reasons for the growth in self managed superannuation funds.
8. The demise of defined benefit funds and the use of accumulation funds as the industry standard fund.
9. Cost of compliance.
10. The appropriateness of the funding arrangements for prudential regulation.
11. Whether promotional advertising should be a cost to a fund and, therefore, to its members.
12. The meaning of the concepts "not for profit" and "all profits go to members."
13. Benchmarking Australia against international practice and experience.
14. Level of compensation in the event of theft, fraud and employer insolvency.
15. Any other relevant matters.

3.1.2. Background on ACCI's submission

This submission particularly represents the concerns of ACCI's members who are trustees of superannuation funds. This submission does not deal with all issues or all perspectives within the superannuation industry.

Several items in the terms of reference relate to trustees. We note that the Corporate Superannuation Association (CSA) has provided a submission to the inquiry on the general benefits of trustee structures, including increased protection of investments from the rest of the trustee's business.

4. RESPONSE TO TERMS OF REFERENCE

4.1. Reference 1: Whether uniform capital requirements should apply to trustees

ACCI considers that the current model of capital requirements should continue. The current standards that apply to trustees have not been found to be insufficient.

Capital requirements need to recognise the differences between different superannuation funds. Uniformity should be required only where this is necessary to achieve the objectives sought by the capital requirement obligations.

4.1.1. Nature of trustees

ACCI supports the comments of the Corporate Superannuation Association (CSA) that:

- Trustees do not currently hold capital (aside from regulatory requirements) because they administer trust funds. They are not operating entities themselves.
- A universal capital requirement would be designed to provide protection in the event of a major systems failure. However, it could fail in this purpose. The existence of a capital sum and the ability to fall on this could discourage rigorous attention to the integrity of the system.
- Insurance arrangements are generally more effective as safeguards than capital requirements.
- The trustee licensing and fund registration requirements provide more appropriate ways of insuring integrity of super funds than imposing capital requirements.

We also make the following points:

- the best response to excessive capital requirements on some businesses is to reduce those requirements, rather than extend the requirements to the whole of an industry.
- APRA now requires all trustees to meet standards and hold a RSE License resulting in a quite far reaching rationalisation of the industry with the disappearance of many funds. The new licensing regime is a

better means of ensuring trustee arrangements are adequate and therefore further changes to adequacy requirements are not warranted.

- Imposing excessive capital requirements will increase the barriers to entry, reduce efficiency and increase costs in the industry.

4.1.2. Industry funds

A number of employer organizations in Australia are trustees of industry superannuation funds.

Industry superannuation funds arose in the late 1980s due to the introduction of occupational superannuation, requiring employers to contribute a mandatory percentage of an employee's earnings (at that time, generally 3 percent) into an industry superannuation fund. The obligation was imposed through the (then) centralised industrial relations system of awards made by industrial relations tribunals. Later, these obligations flowed into agreements made under industrial relations laws. It was only in 1992 that the obligation became a legislative one as occupational superannuation obligations were universally imposed across the economy (and legislated to increase over the next decade to the current 9 percent of earnings).

Employer organisations were heavily involved in the establishment of many industry superannuation funds. These industrial organizations sponsored the establishment of funds (generally on an industry basis), appointed trustees, made their officials and staff available to act as trustees and promoted the funds and the benefits of superannuation generally.

In most cases, the industrial organizations sponsoring the establishment of the funds are industrial organizations registered under federal or state industrial relations law. As a consequence, these bodies (and their officials) are subject to regulation, through industrial relations laws. These include regulations in relation to superannuation.

The industrial organizations have specific rights and obligations under tax and other laws by virtue of their status under industrial relations laws. They are generally not for profit bodies, service providers, subject to tighter regulatory control and reporting requirements than associations generally.

Therefore, the argument that additional requirements should be imposed on industry fund trustees is weak.

4.2. Reference 2: Whether all trustees should be required to be public companies

ACCI considers that the existing arrangements should continue. Trustees are already subject to significant levels of prudential regulation at the moment.

The Corporate Superannuation Association has noted that the requirement to be a public company would mean that trustees would need to prepare public financial statements and hold an annual general meeting (AGM). The CSA noted that the issue of public disclosure of accounts and the requirement to hold AGMs were considered and rejected by the

Government's Superannuation Working Group. The arguments against this include:

- The significant costs
- Members of the fund already receive annual reports of the fund
- The trustee is already regulated by APRA.

In any case, requiring trustees to hold AGMs would not make sense, because only owners of the trustee could attend the AGM, not the investors in the superannuation fund. In addition, in most, if not all cases, the trustee company is a single purpose vehicle and therefore has no material business or accounts outside of its trustee function.

4.2.1. Industry fund trustees

Given the context on the creation and operation of industry funds (described in Section 4.1.2 above), industrial organizations acting as trustees of industry funds should not be required to be public companies.

The protection of fund members should arise from the regulatory obligations that trustees are required to meet, not the nature of the legal entity that comprises the trustee.

ACCI does not support any additional requirement for the financial accounts of industry fund trustees to be made public, given existing regulatory obligations.

4.3. Reference 4: The role of advice in superannuation

Employers are not allowed to provide financial advice to employees, unless licensed to do so.

On principle, ACCI does not oppose this approach.

However, there are a number of broad concerns with the regulation of advice which are raised by other submissions to this inquiry. The FSR regime has imposed significant costs and it has not been demonstrated that these costs outweigh the benefits.

Specifically for the employer-employee relationship, ACCI has the following concerns.

Superannuation choice of fund means that employers act as the intermediary between an employee and superannuation funds.

As a consequence, employers have obligations to inform employees of their rights and obligations, but are not allowed to provide financial advice. Employers are expected to know that they are obliged to answer certain questions, but not others.

This may seem like a clear distinction in theory, in practice it is not so easy.

Employees and employers have a relationship that is (ideally) based on the principles of open communication, problem solving and productive engagement. It is inevitable that many employees provided with choice forms by their employer, or advised of obligations the employer has to make

regarding superannuation payments, will ask questions of the employer. After all, these are human interactions between employee and manager.

The distinction between advice and information is not always clear. In addition, the interactions over superannuation can be undertaken by employees and agents of the employer who are not under the employer's direct control and supervision.

Moreover, it is artificial for an employer to answer some employee questions but not others.

The problem is particularly evident in small businesses. Small business owners and proprietors are generalists, not specialists. They have to know a bit about many things, of which occupational superannuation is just one small component. They already struggle with the need to know enough about their obligations to make superannuation payments, determine eligibility, deal with inconsistencies between awards and superannuation guarantee legislation, deal with agents, advisers and accountants (and reconcile the conflicting advice they can get) and the requirement to offer choice. The requirement to distinguish between advice and information (even if they know that the distinction is important) is an extra difficulty.

We do not want employers to be financial advisers (unless this is their business) and we do not want them to be liable for the consequences of good or bad financial advice. Therefore, ACCI does not oppose the proposition that employers should not give financial advice.

However, given the above, we believe that:

- Broadly, the overregulation in the FSR regime should be reduced;
- Clearer direction should be given by the regulatory authorities to the meaning of financial advice in the context of employer / employee relations;
- There should be a defence for an employer acting in good faith; and
- There should be an educative rather than prosecutorial approach to enforcement – beyond the current educative period that has accompanied the introduction of choice of fund.

4.4. Reference 5: Member investment choice

The introduction of choice of fund has been a significant change to the superannuation industry.

ACCI supports choice of fund. Its implementation has been relatively smooth, notwithstanding the need for employers (including small business) to comply with its obligations. The costs of implementing choice has been largely borne by Australian business.

The information campaign by the regulators, the government, the superannuation industry and employer organizations has been a significant contributor to the relatively smooth introduction of choice of fund.

Firm conclusions about the administrative costs of choice should not be drawn too soon. Choice has only recently been extended to state employees in incorporated businesses, and more importantly choice has only been exercised by a small percentage of the workforce.

ACCI also supports member investment choice. This should be assisted by choice of fund. If an employee is not satisfied with the investment choice of a particular fund, they should move their superannuation investments into a different fund.

At this stage, ACCI does not consider that special regulations are needed over member investment choice, beyond the existing regulations.

4.5. Reference 9: Cost of compliance

Employers face compliance costs with all regulatory obligations, including the meeting the superannuation guarantee and choice of fund requirements.

The most significant cost issue associated with superannuation for employers remains the level of mandatory contribution. It is set at 9 percent. There is no co-contribution obligation. It is all an employer's obligation. It should not be increased.

The superannuation guarantee imposes significant costs on business – ACCI calculates that each one percent obligation costs \$2.2 billion each year and will cut employment by around 57,000, based upon calculations by Professor John Freebairn of Melbourne University¹.

The Rethinking Regulation taskforce report on Business Red Tape (2006) made a number of recommendations about easing the compliance cost burden on employers associated with superannuation.

Recommendation 5.49 proposes that the Australian government should:

- raise the superannuation guarantee exemption threshold to \$800 per month and periodically review the threshold; and
- allow employers to use a quarterly exemption threshold, equal to the monthly exemption threshold multiplied by three.

ACCI supports these recommendations, and is disappointed that the Government has not adopted them.

The Government's simpler super policy will mean a very substantial simplification of the superannuation system, which should reduce compliance costs for employers and employees.

1. See J Freebairn (1998) "Compulsory Superannuation & Labour Market Responses" *Australian Economic Papers*, March 1998, pp 58-70. A nine percent employer levy, with the present value of the superannuation benefits valued at 67 percent of the levy, is estimated to cut employment by 0.5 percent.

4.6. Reference 11: Whether promotional advertising should be a cost to a fund and, therefore, to its members

This should be looked at in a similar way to any other trustee expenditure. That is, the trustees are required to administer the business of the fund in the interests of its members. Appropriate advertising expenditure can therefore be incurred in pursuit of optimal scale of membership and reduction of unit costs.

4.7. Reference 14: Level of compensation in the event of theft, fraud and employer insolvency

There is a higher level of prudential regulation and oversight which applies to superannuation products compared to other financial products. This regulation generally provides appropriate safeguards for the security of employee superannuation contributions, including to minimise the possibility that such funds may be lost due to theft, fraud and insolvency. This higher level of regulation is accompanied by a robust compliance regime and significant penalties. This should be kept in mind when consideration is given to additional measures.

On employer insolvency, ACCI has been a significant contributor to the debate on this issue.

The move to quarterly superannuation obligations (from annual obligations) was designed in part to minimize the risk to fund members in the event of lost contributions because of employer insolvency. ACCI supported that move as a more effective way to address the employer insolvency issue in a superannuation context than the other broader, more costly (and generally deficient) proposals that were put forward in the wider debate about employee entitlements.

Better data is needed on this issue. Some of this may be ascertainable with the General Employee Entitlements and Redundancy Scheme (GEERS), which has now operated for six years.

It is important that responses to employee entitlements on insolvency be proportionate to the problem and not create worse problems. Solvent businesses should not carry an unfair burden of the costs of insolvency of other businesses (noting that businesses pay a large proportion of the tax burden).

Only where the real dimensions of the problem are known can a policy response of a proportionate nature be properly and equitably introduced. In the absence of that data and examination of administrative solutions that may arise from within the superannuation industry or employers themselves to minimise the problem, we do not support the GEERS scheme providing for unpaid superannuation contributions.

5. ACCI MEMBERSHIP

ACT and Region Chamber of Commerce and Industry
Australian Business Ltd
Business SA
Chamber of Commerce and Industry Western Australia
Chamber of Commerce Northern Territory
Commerce Queensland
Employers' First TM
State Chamber of Commerce (New South Wales)
Tasmanian Chamber of Commerce and Industry
Victorian Employers' Chamber of Commerce and Industry
Agribusiness Employers' Federation
Air Conditioning and Mechanical Contractors' Association of Australia
Association of Consulting Engineers Australia
Australian Beverages Council
Australian Consumer and Specialty Products Association
Australian Entertainment Industry Association
Australian Hotels Association
Australian International Airlines Operations Group
Australian Made Campaign Limited
Australian Mines and Metals Association
Australian Paint Manufacturers' Federation
Australian Retailers Association
Housing Industry Association
Insurance Council of Australia
Investment and Financial Services Association
Master Builders Australia
Master Plumbers and Mechanical Services Association Australia
National Electrical and Communications Association
National Retail Association Limited
NSW Farmers Industrial Association
Oil Industry Industrial Association
Pharmacy Guild of Australia
Plastics and Chemicals Industries Association
Printing Industries Association of Australia
Restaurant and Catering Australia
Standards Australia Limited
Victorian Automobile Chamber of Commerce