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26 September 2006

Committee Secretary
Parliamentary Joint Committee on Corporations and Financial Services
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

Via email: corporations.joint@aph.gov.au

Dear Sir or Madam,

Please find attached the ACTU's submission to the Parliamentary Inquiry into the structure and operation of the superannuation industry.

For further information please contact Linda Rubinstein of the ACTU on (03) 9664 7340.

Yours faithfully,

Linda Rubinstein
Senior Industrial Officer

ACTU SUBMISSION TO THE PARLIAMENTARY INQUIRY INTO THE STRUCTURE AND OPERATION OF THE SUPERANNUATION INDUSTRY

September 2006

D. No: 13/2006

Recommendations

Recommendation (i):
The ACTU recommends against any proposal to impose capital requirements on not-for-profit superannuation trustees.

Recommendation (ii):
The ACTU recommends that the Committee acknowledge that the current regulation of superannuation funds exceeds the relevant requirements of public companies and that there is no benefit to be achieved from requiring that superannuation trustees be public companies.

Recommendation (iii):
The ACTU recommends the prohibition of the payment of commissions on Superannuation Guarantee contributions.

Recommendation (iv):
The ACTU recommends that research be conducted to ascertain whether the exercise of member investment choice advantages those members and whether choices made are appropriate, taking into account the life circumstances of the member.

Recommendation (v):
The ACTU recommends that the Government develop a strategy for ensuring minimum superannuation contributions of at least 15 per cent for all employees.

Recommendation (vi):
The ACTU recommends that the Committee acknowledge that a competitive superannuation system requires that all organisations be treated equally in their ability to undertake promotional advertising.

Recommendation (vii):
The ACTU recommends that the Committee confirm that the use of terms such as “not for profit” by industry funds and others where relevant is legitimate.

Recommendation (viii):
The ACTU recommends that unpaid Superannuation Guarantee contributions be covered by GEERS in cases of employer insolvency.

INTRODUCTION

1. The ACTU welcomes the opportunity to make a submission to the inquiry.

2. By and large the ACTU believes that the *Superannuation Industry (Supervision) Act 1993* (SIS) has served fund members and the industry well, as can be seen in the general absence of large-scale fund failures or crises.

3. Where there have been examples of fraud and failure, this has been found most commonly in the non-superannuation investment area, such as the recent scandal concerning incentives to financial planners to persuade clients in invest in Westpoint, or with small employer-supported funds which do not have provision for proper employee representation. In regard to the latter, the ACTU is confident that the recently introduced licensing scheme will result in many from this category of fund exiting the industry.

4. The ACTU submits that the inquiry should focus on the main issues in the terms of reference which affect the retirement incomes of working Australians. In particular, the activities of the financial planning industry, recently highlighted by ASIC's revelations about AMP - one of the better-known financial services brands - demonstrates that the current system of providing advice does not operate in the interests of the community. The AMP case vindicates the warnings given by many, including the ACTU, that choice of fund would not work for the benefit of fund members who do not have a high degree of financial expertise and so are left exposed to self-interested advisers.

5. The ACTU is concerned about the motivation behind a number of the terms of reference which appear to be aimed at attacking industry superannuation funds rather than the real regulatory deficiencies which leave superannuation fund members without adequate protection.

6. The ACTU played a pivotal role in the creation of industry superannuation funds, and continues to be committed to a sector which:

    (a) Provides low-cost superannuation to over five million Australians;

    (b) Has brought down the costs imposed by the industry generally through competitive pressure;

    (c) Operates solely in the interests of fund members, with no profits returned to company shareholders;

    (d) Has achieved excellent investment returns, more than comparable to any other sector of the superannuation industry; and

(e) Has revolutionised standards of transparency and communication with members.

7. It is difficult to see this inquiry other than as yet another attempt by the Howard Government to attack the industry funds in order to assist the banks, life companies and their associated advisors which are the Liberal Party's traditional supporters.

8. However, the ACTU is confidant that, once again, the facts about the industry funds will speak for themselves, and the Committee will be left with no credible option other than to find that the industry funds lead the way in providing quality financial services.

9. Any recommendations should be directed towards ensuring that the community is given the facts and assisted to make choices which are in their interests, not those of financial planners and shareholders in financial service providers.

10. The ACTU submission will address only those terms of reference which are of particular relevance to the interests of working people.

<u>TERM OF REFERENCE 1:</u> WHETHER UNIFORM CAPITAL REQUIREMENTS SHOULD APPLY TO TRUSTEES

11. The 2002 *Report of the Superannuation Working Group into Options for Improving the Safety of Superannuation* recommended:

    ",,,that as part of the licensing process, APRA should determine the amount of resources, including capital, required to be held by each trustee to address the operational risks relevant to that trustee. The legislation should list the factors APRA is required to take into account in determining an appropriate amount of capital, but should not specify a minimum or maximum amount of capital required for each trustee nor how it should be held. APRA should also provide guidance to industry on the weightings it intends to apply to these factors."

12. The ACTU took part in the consultative process of the SWG. As the Report acknowledges, most submissions opposed the imposition of capital requirements on not-for-profit funds. Industry funds and the ACTU, in particular, pointed out that it would be impossible for the employer organisations and trade unions, which are generally the shareholders or sponsors of industry fund superannuation trustees, to satisfy anything but the most nominal capital requirement.

13. Should these organisations be required to raise such capital, they would have little choice other than to turn to the private sector for either loan or equity funding, making the funds' continuing existence on a not-for-profit basis very difficult. The linking of capital adequacy to the safety or security of members' superannuation is a smokescreen for a plan to hand

over a successful sector of the financial services industry operated on a mutual basis to the private sector.

14. In its response to the recommendations of the SWG, the Government said:

    "The Government supports in-principle a risk-sensitive framework for the holding of capital to address operational risk, but considers that the combination of requirements that each trustee be licensed by APRA and prepare a risk management plan, will substantially address concerns related to operational risk. Arguably the need for capital in the future may be substantially reduced as other factors come into play to address operational risk. On this basis, the Government supports the status quo for capital requirements at this time, to be revisited once the impact of the licensing and RMP reforms can be assessed."

15. The ACTU supported the Government's stated response at that time, and submits that the experience of the licensing process and, in particular, the extensive requirements for the preparation and monitoring of risk management processes, makes the need for capital to address potential operational risk as of even less relevance.

16. The Committee should note that the licensing requirements have led to a number of fund mergers or decisions by trustees not to continue running a fund. This process has seen retirement from the industry of smaller entities which, arguably, would be the most vulnerable to risk. In any event, with the licensing process completed only in June 2006, it is far too early to judge whether the licensing and risk management reforms have left gaps which capital adequacy requirements could fill.

17. The SWG gave four reasons for imposing capital requirements on superannuation trustees:

    (a) To demonstrate financial substance and long-term commitment by the trustee;

    (b) To have money-at-risk to provide an incentive for the trustee to manage the fund well;

    (c) To act as buffer against operational or governance risk that may arise, including to cover wind-up costs; and

    (d) As a barrier to entry for marginal players.

18. The ACTU submits that there is no substance relating to industry funds in any of these reasons.

    (a) The unions and employer organisations which hold the shares in trustee companies are, without exception, long-standing organisations which are subject to extensive financial and

governance regulation under the *Workplace Relations Act 1996* and which have shown their commitment to the funds in which they are involved for, in most cases, at least 15 years;

(b) Personal liability of individual directors provides financial incentives to manage the funds well, assuming that legal, moral and reputational requirements were insufficient;

(c) It is difficult to envisage circumstances in which a capital requirement of a few million dollars could address substantial problems in a multi billion dollar fund, while potential problems in smaller funds should be identified through the licensing and risk management processes, as appears to have been occurring;

(d) Licensing requirements would seem to be more than a sufficient barrier to the entry of marginal players.

Recommendation (i): The ACTU recommends against any proposal to impose capital requirements on not-for-profit superannuation trustees.

TERM OF REFERENCE 2: WHETHER ALL TRUSTEES SHOULD BE REQUIRED TO BE PUBLIC COMPANIES

19. The trustees of most industry superannuation funds are proprietary companies, although there are examples of trusts which are public companies limited by guarantee. The ACTU has difficulty in understanding the policy issues which underlie this term of reference given that there would appear to be little substantive difference, in practice, between the operation of the different types of corporate trustees.

20. Proprietary company trustees are regulated by a combination of the Corporations Act, SIS, licensing requirements imposed by APRA and their own constitutions. Most industry funds, including the largest of these, do meet the standards of public companies in all substantive areas, including in relation to auditing, annual meetings of shareholders, office open to the public, preparation and disclosure of financial and directors' reports, disclosure of and voting on matters in which a director has a material personal conflict of interest and dealing with related parties.

21. The fact that proprietary companies may not offer shares to the public is not relevant to the operation of industry superannuation funds. The ACTU is concerned that, taken together with the capital adequacy issue discussed above, the Government's intention is to push the industry funds towards privatisation and, incredibly, public listing.

22. The only purpose of this could be to enable shareholders to skim off dividends and capital gains from the retirement savings of fund members.

23. If this were to occur, millions of superannuation fund members would be denied the choice they now have to invest with not-for-profit funds operated solely in the interests of members.

Recommendation (ii): The ACTU recommends that the Committee acknowledge that the current regulation of superannuation funds exceeds the relevant requirements of public companies and that there is no benefit to be achieved from requiring that superannuation trustees be public companies.

TERM OF REFERENCE 4: THE ROLE OF ADVICE IN SUPERANNUATION

24. The ACTU submits that while many Australians need financial advice at some stage in their life, most do not need permanently ongoing advice as advocated by the financial planning industry.

25. Further, Australians should have the confidence that when seeking advice the adviser will act solely in their interests and not provide advice based on the commission they can earn by recommending a particular product.

26. Currently, the vast majority of financial advisers do not recommend the best performing superannuation funds (according to SuperRatings the top ten performing superannuation funds, net of fees and taxes over five years to 30 June 2006, are all industry funds) to their clients. Further, most people visiting a planner are not aware that, in effect, they are being sold a product rather than given advice that is in their best interests.

27. The recent ASIC Shadow Shopping survey found that conflicts of interest are rife within the financial planning industry:

    - 16 per cent of advice given did not have a reasonable basis in some respect;
    - Advice was six times more likely to be non-compliant where the adviser had a conflict of interest; and
    - Advice was three times more likely to be non-compliant where the adviser recommended an associated product.

28. ASIC concluded that consumers could be worse off as a result of receiving such advice. In issuing the Enforceable Undertaking agreed with AMP, ASIC noted that the AMP practices were not atypical in the industry.

29. The reality is that financial planners are often conflicted when providing advice to clients because of the structure of the industry. Commissions are primarily a distribution tool for major financial institutions and remuneration method for financial advisers. Financial planners recommend certain products because of the commission, not because they are in the best interests of their clients. Frequently, as found by ASIC, the recommended products leave the client worse off. The reason financial planners rarely recommend industry funds is because they do not pay commissions.

30. While advisers and dealer groups argue that trail commissions pay for advice to clients, the value of advice is questionable when, as research consistently shows, members of commission-based retail funds are likely to retire with substantially less superannuation than their counterparts in industry funds.

The effect of fees and commissions on final account balances

31. The ASIC website states that an extra one per cent in fees could cost a fund member 20 per cent in retirement benefit over 30 years.

32. Research commissioned by Industry Fund Services and conducted by Rainmaker and SuperRatings draws similar conclusions.

33. SuperRatings found that over the past five years (to 31 March 2006), earnings for average industry funds were $12.30 for every $1.00 taken out in fees, while master trusts, over the same period, had on average, given back just $4.50 for each $1.00 in fees charged.

34. SuperRatings concluded that over a 40 year working life, Australians could be more than 28 per cent better off in an industry superannuation fund, based on existing fee structures. This is equivalent to having $143,906 more (in today's dollars) or $386,397 more (in future dollars) in one's superannuation account at retirement.

35. Rainmaker Information found the industry superannuation funds' outperformance was due to lower fees and better investment performance resulting from the industry funds' tendency to include a higher level of growth assets in their diversified default options than master trusts.

36. According to Rainmaker Information, the overall performance advantage of industry funds in the wholesale superannuation market has meant their members saw their account balances outgrow master trusts by $486 over the past year, $2,283 over the past three years and $5,411 over the past five years.

37. In the personal superannuation market, where members do not have access to employer discounts, industry funds also have the advantage; they delivered $99 more dollars over one year, $2,165 more over three years and $15,173 more over five years.

38. The ACTU submits that an immediate prohibition of commissions on Superannuation Guarantee (SG) contributions should be legislated for the following reasons:

    (a) Trail commissions erode the retirement savings of working Australians;

    (b) Commission payments create a conflict of interest for the financial adviser which can lead to sub-optimal advice for clients;

    (c) The current inadequate disclosure regime means many people do not understand the fees and commissions being charged, while low levels of financial literacy, identified by the Government, exacerbate the problem;

    (d) The financial planning industry is unable to self-regulate effectively; and

    (e) The public policy objectives of the SG, to increase national savings and address the ageing population, are most effectively served by maximising the retirement benefits of working Australians, which is undermined by the effect of commissions on final account balances.

Recommendation (iii): The ACTU recommends the prohibition of the payment of commissions on Superannuation Guarantee contributions.

TERMS OF REFERENCE 5 & 6: THE MEANING OF MEMBER INVESTMENT CHOICE AND THE RESPONSIBILITY OF THE TRUSTEE IN A MEMBER INVESTMENT CHOICE SITUATION

39. ”Member investment choice” is the term generally used to describe the ability for members of a superannuation fund to choose between different investment strategies.

40. A fund with a basic suite of choices generally offers a “capital stable”, a “balanced” and a “growth” choice, with the “balanced” fund being the default for the overwhelming majority of members who do not exercise choice.

41. At the other extreme, some funds offer a large range of choices, including particular asset classes, individual managers, ethical options and even an ability to choose individual shares.

42. As APRA has pointed out in *Managing Investments and Investment Choice* (Superannuation Circular No. II.D.1 March 2006), the offering of investment choice does not relieve trustees from their obligation to formulate and implement an investment strategy. Where choice is offered, a strategy must be developed for each choice.

43. As far as the ACTU is aware, funds which offer investment choice do formulate specific strategies for each choice and monitor these in the same way as they do the main or default option, which, typically, invests for the overwhelming majority of fund members.

44. Funds which offer choices based on individual asset classes or even individual company shares generally impose restrictions based on a minimum amount in the member’s account and/or requirements relating to the proportion of the member’s account which can be allocated to a particular asset class or a particular share.

45. While these protections help to ensure that members making inappropriate choices will not be disproportionately disadvantaged, there is legitimate concern that investment choice, particularly when it goes beyond the three or four basic choices offered by most industry funds, is more of a marketing device than a serious means of increasing retirement incomes.

Recommendation (iv): The ACTU recommends that research be conducted to ascertain whether the exercise of member investment choice advantages those members and whether choices made are appropriate, taking into account the life circumstances of the member.

TERM OF REFERENCE 8: THE DEMISE OF DEFINED BENEFIT FUNDS AND THE USE OF ACCUMULATION FUNDS AS THE INDUSTRY STANDARD FUND

46. The reduction in the application of defined benefit funds has occurred for reasons including:

    (a) The implementation of vesting and portability standards affected defined benefit funds in that benefits were required to be paid to employees after much shorter periods of employment;

    (b) Increasingly complex regulation added to the cost of employer-run defined benefit funds;

    (c) The availability of industry superannuation funds providing a low-cost, efficient superannuation option at no cost to the employer;

    (d) Where corporate defined benefit funds were not offered to all employees of an employer at the time of introduction of award-based superannuation and the SG, the establishment of universal minimum superannuation entitlements encouraged employers to move towards uniformity in contributions, benefits and funds;

    (e) The declining ability of superannuation benefits to promote employee loyalty and the reducing value given by employers to employee loyalty;

    (f) Reduced public sector employment increasing the unfunded liability of public sector superannuation.

47. It is sometimes said that the advantage of private sector defined benefit funds is that the employer carries the investment risk, rather than the employee.

48. The ACTU believes that the issue of who carries the investment risk is less important than the rate of employer contribution and the investment strategy and safeguards which are applied.

49. Where the notional employer contribution to a defined benefit fund exceeds that to an accumulation fund then, all other things being equal, the member in the defined benefit fund will have higher benefits in retirement. In many defined benefit funds, however, the benefit of good investment returns has been reaped by employers in the form of "contributions holidays"; that is, members' benefits are funded by the returns on their own contributions, even though these are underpinned by an employer "promise".

50. The main issue where employers, including state governments and other public sector organisations, have closed off their defined benefit funds is that they invariably proceed to contribute at a lower effective rate to the accumulation fund. To its great credit, the Commonwealth is one of very few organisations which has committed to contributing to a new accumulation plan at the same rate as received by defined benefit plan members.

51. Where employers do contribute to accumulation schemes at rates equivalent to defined benefit funds, employees will benefit from the fact that investment returns generally run higher than salary increases which is the factor by which defined benefits increase over time.

52. The recent agreement by the major parties to increase contributions to parliamentarians' superannuation to 15.4 per cent, in line with that contributed for Commonwealth employees highlights the inadequacy of the nine per cent SG.

<u>Recommendation (v):</u>The ACTU recommends that the Government develop a strategy for ensuring minimum superannuation contributions of at least 15 per cent for all employees.

<u>TERM OF REFERENCE 11:</u> WHETHER PROMOTIONAL ADVERTISING SHOULD BE A COST TO THE FUND, AND THEREFORE TO ITS MEMBERS

53. It is widely assumed that this term of reference specifically relates to the "Compare the Pair" advertising by the industry superannuation funds.

54. The first, and obvious, point to make is that the cost of any advertising, undertaken by any fund, whether an industry fund or retail fund, is borne by the members.

55. The ACTU continues to hold reservations about the choice of fund legislation, particularly the Government's failure to prohibit the payment of commissions on SG contributions or to effectively address the problem of financial rewards offered directly or indirectly to employers to induce them to select master trusts as their default fund.

56. However, given that choice was intended to increase market-based competition, it is extremely strange that there appears to be some questioning of the right one sector of the industry to advertise.

57. It is even stranger when it is noted that this questioning is addressed to the sector of the industry which consistently offers its members the lowest cost and highest performing superannuation.

58. The introduction of choice of fund made it necessary for industry funds to educate their members and market their funds for the purposes of retention and recruitment where this delivers economies of scale. Television advertising and other advertising and marketing strategies are required in an environment where:

(a) Labour turnover is currently 20 per cent annually (therefore presenting a retention risk);

(b) There is a low level of financial literacy among Australians and a lack of understanding about the effects of fees and commissions on final account balances;

(c) Many working Australians have more than one superannuation account and may be unaware of this;

(d) The financial planning industry refuses to recommend industry superannuation funds to their clients because these funds do not pay commissions.

59. In a Circular dated 14 March 2005, APRA made it clear that, in its opinion, the joint advertising campaign undertaken by a number of industry funds does not breach the sole purpose test. Given that the advertisements have now been running for over 15 months and no action has been taken by APRA, it can be assumed that the regulator continues to hold this view.

60. The advertising by the industry funds should also be considered in the context of advertising, marketing and distribution activity by banks, financial planners and retail funds.

61. According to the ASIC's January 2006 report "Monitoring advertising in superannuation" which examined advertising from 1 July 2004 to 26 November 2005:

(a) Financial advisory services accounted for 29 per cent of overall advertising and dominated the TV slots;

(b) Financial planners dominated advertising with 38 per cent overall share;

(c) Retail superannuation funds were the next most prominent advertising group with a 22 per cent share.

(d) Industry super funds contributed just seven % of the total advertising share within superannuation advertising.

62. For the 2005 financial year AMP Financial Services Pty Ltd spent $24 million on advertising. According to AC Nielsen, for the first six months of 2006 the five major banks (ANZ, Commonwealth, NAB, St George and Westpac) spent, in aggregate, $73.7 million on advertising.

63. In addition to this advertising expenditure, retail funds pay hundreds of millions, if not billions of dollars, to financial planners in the form of sales commissions. AMP Financial Services alone paid $360 million in commissions during 2005.

64. In this context industry funds have an obligation to inform their members (and potential members) of the benefits of industry fund membership. Recent research undertaken by FinaMetrica (reported by Robin Bowerman, *Canberra Times* 20/09/2006) suggests that the industry funds are having success with this education. The research found that 55 per cent of respondents said that lower costs would be a major factor in changing funds (up from 37 per cent a year ago).

65. The ACTU submits that objections to the successful industry fund "Compare the Pair" advertising are purely commercial in nature, evidenced by research that shows two out of three financial planners "feel under siege from the industry super funds campaign".[1]

<u>Recommendation (vi):</u> The ACTU recommends that the Committee acknowledge that a competitive superannuation system requires that all organisations be treated equally in their ability to undertake promotional advertising.

TERM OF REFERENCE 12: THE MEANING OF "NOT-FOR-PROFIT" AND "ALL PROFITS GO TO MEMBERS"

66. The terms "not-for-profit" and "for-profit" are commonly used by the media and industry to describe two sectors of the superannuation industry:

    - Not-for-profit: Industry, government and corporate funds whose sole purpose is to invest members' superannuation contributions for the retirement benefit of members and so do not pay a dividend to shareholders;

    - For-profit: Retail funds, master trusts and commercial superannuation funds owned by banks, insurance companies and financial companies, which have the dual objectives of making a profit for shareholders (through the parent company) and delivering returns to fund members.

67. The term "all profits go to members" is a marketing term used by some industry funds to explain that the "profits" (the earning rate) derived from investments, less the costs of running the fund, go to the members of the fund. The industry fund television campaign uses the marketing term "run only to profit members".

68. The term "not-for-profit" and other marketing terms are accurate descriptions of industry, government and corporate funds and effectively

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[1] Victoria Young "Planners feel besieged by industry funds" *Independent Financial Advisor* 18/09/06

differentiate the purpose of these funds from for-profit financial institutions. A similar distinction exists in the health insurance industry where some funds operate on a not-for-profit basis whilst others do not.

69. There has been some media commentary regarding the joint ownership by industry funds of some service providers.

70. Historically, these organisations were established by industry funds with the intention of lowering the cost of service to funds and/or members. Such organisations operate successfully in highly competitive industries and have a strong track record within the financial services industry. These organisations are owned by industry funds and any profits derived are returned to the fund and then the members.

71. Industry funds are heavy users of external service providers, of which many are "for-profit" organisations. The ACTU rejects any suggestion that using commercial suppliers and service providers compromises the not-for-profit status of industry funds.

Recommendation (vii): The ACTU recommends that the Committee confirm that the use of terms such as "not for profit" by industry funds and others where relevant is legitimate.

TERM OF REFERENCE 14: COMPENSATION IN CASES OF EMPLOYER INSOLVENCY

72. In Australia, company insolvency rarely results in loss of superannuation entitlements other than employer and employee contributions which ought to have been made and paid to the fund in the period leading up to the insolvency.

73. In the US, by contrast, where regulators have permitted the investment of a high proportion of a company's pension fund in its own stock, insolvency can result in employees losing the bulk of their retirement incomes. In some industries in the US, long-established and generous defined benefit pension plans have been funded through the contributions of current employees, meaning that, but for a government scheme established for these circumstances, a company's insolvency would leave past as well as present employees without their promised pensions.

74. Australia has been protected from this kind of scandal because private sector defined benefit schemes have tended to be considerably less generous than their US equivalents and benefits are rarely paid as pensions by the funds. Restrictions on superannuation funds investing in their corporate sponsor's business, regulation of corporate fund trustees and actuarial requirements have all worked to limit beneficiaries' vulnerability to employer insolvency.

75. This is not to say that there have been no examples of defined benefit funds being affected by insolvency. The collapse of Ansett Airlines in 2001 left its largest superannuation plan unable to pay additional benefits to which members were entitled on redundancy. The reason for this was the actuary had not required the company to provide funding on the basis of an assumption that the company would close down completely, although provision had been made for some redundancies.

76. The Ansett case highlights that it is members who take on the final risk in defined benefit funds that are not fully-funded by employers.

77. A more common problem is that employees may have no means of recovery when their employer becomes insolvent without having made all contributions to their employees' accumulation fund.

78. Prior to July 2003 employers were able to pay the SG annually, meaning that payments could be considerably in arrears before there was any signal to employees or the ATO that there might be a problem. In cases where failure to make superannuation contributions in the previous year were not followed up by the fund, the member or the ATO, it would be possible for contributions to be in arrears for a considerable period of time.

79. Although the introduction of a requirement for SG contributions to be paid into a fund every quarter is an improvement and of significant assistance with enforcing compliance, the reality is that when an employer becomes insolvent the likelihood is that employees' superannuation contributions will be in arrears, together with members' own voluntary contributions and/or any additional amounts payable through salary sacrifice.

80. It should be noted here that most industrial awards and industry fund trust deeds have a longstanding requirement for superannuation contributions to be paid monthly. Industry funds, unlike master trusts, also have robust procedures for following up arrears with employers directly and through credit control providers.

81. The progressive removal of award superannuation provisions as a result of the Government's Work Choices legislation will see an inevitable increase in employer arrears, including in insolvency cases, as the monthly payment requirement falls back to the quarterly default.

82. A similar effect will result from the Choice of Fund legislation, which has led to many superannuation funds seeing an increase in the number of "deemed" employers; that is, employers making contributions for one or more employees without formally signing up as a participating employer and agreeing to monthly contributions in accordance with the fund's trust deed.

83. Although superannuation contributions rank with wages in priority payments in a company winding up, in many cases there are no funds available for distribution to employees after payment of administration costs and secured creditors.

84. In light of the above, it is extremely disappointing that the Government's recent decision to double the amount of redundancy pay available to employees of insolvent companies under its General Employee Entitlements and Redundancy Scheme (GEERS) did not include a commitment to include unpaid superannuation contributions.

85. There is no logical reason why unpaid wages, leave entitlements and the like should be covered by GEERS but not unpaid superannuation.

Recommendation (viii): The ACTU recommends that unpaid Superannuation Guarantee contributions be covered by GEERS in cases of employer insolvency.