



Australian
Administration
Services

a KAZ company

Australian Administration Services Pty Ltd
ACN 003 429 114
Level 12, 126 Church Street
Parramatta NSW, 2150
Tel: (02) 8837 0000



Quality
Endorsed
Company
ISO 9002 LC6634
Standards Australia

Australian Administration Services submission to the Senate Economics Legislation Committee—*Inquiry into the Superannuation Safety Amendment Bill 2003*

Introduction

Australian Administration Services (AAS) welcomes the opportunity to comment on the Superannuation Safety Amendment Bill 2003 (the “Bill”).

The changes proposed in the Bill are very important both to AAS, as one of Australia’s leading superannuation administrators, and to our clients.

We strongly support improving the safety of retirement savings in an efficient manner, but without imposing an excessive level of additional requirements (and related costs) for superannuation funds and hence their members.

In our submission, we address the following main points relating to the Bill:

- timing of implementation;
- public understanding of superannuation;
- overlap between APRA and ASIC;
- breach of equal representation requirements; and
- laws covered by the Risk Management Strategy.

We would be pleased to provide more details or discuss our submission further on request.

About Australian Administration Services

Australian Administration Services Pty Ltd (AAS) provides professional core administration and related customer service to superannuation funds and redundancy trusts. We specialise in services to industry superannuation funds.

AAS is a fully owned subsidiary of KAZ Group Limited, the leading Australian specialist provider of information technology and business process outsourcing services.

Through 700 employees, based in six states, we provide superannuation administration and customer services to about 47% of our target market. Our services are provided to:

- over 25 funds and subfunds;
- 300 individual trustees and fund executives
- 3.4 million members
- 165,000 employers.

AAS is ISO 9001 certified as a Quality Endorsed Company.

History

The *Superannuation Safety Amendment Bill 2003* was introduced to the House of Representatives on 27 November 2003. On 3 December 2003, the Bill was referred to the Senate Economics Legislation Committee without being passed by the House. The Committee called for public submissions by 28 January 2004 and is due to report by 19 February 2004.

Previously, an exposure draft of the *Superannuation Safety Amendment Bill 2003* was released by the Commonwealth Department of Treasury for public consultation on 30 May 2003, with submissions due by 11 July 2003. We would be pleased to provide you on request with a copy of our submission to the Department of Treasury's inquiry on the exposure draft.

The exposure draft followed the March 2002 report of the Superannuation Working Group titled *Options for Improving the Safety of Superannuation* and the Government's October 2002 response to that report.

Regulations

In preparing this submission, we note that many of the details relating to the Bill will depend on Regulations.

On 11 December 2003, the Department of Treasury commenced public consultation on the regulations and operating standards to be introduced under the Bill, with comments on proposed drafting instructions to be submitted by 29 February 2004. We plan to make a submission to the Treasury's inquiry. A copy of our submission to the Department of Treasury could be made available to the Committee on request once completed.

While we have mainly restricted our comments in this submission to the Bill, in a few places we also refer to the proposed content of the regulations.

Detailed Comments

Timing of Implementation

We note that the Department of Treasury's consultation period on the drafting instructions for Regulations under the Bill closes on 29 February 2004. We are aware that after the Regulations are then drafted, they may be referred to the Committee for review. Bearing this in mind, we submit that even with the proposed transitional period, a very tight timeframe will be required for the industry and the regulator to have processes and procedures in place prior to the commencement of the Bill on 1 July 2004.

We urge the Committee and the Government to ensure that sufficient time is provided for drafting and industry consultation on regulations and regulatory material to be issued by APRA. It is essential to avoid the problems which occurred with the introduction of the Financial Services Reform regime, which had over 20 amending bills and regulations and continual issue of regulatory policy statements throughout the transitional period.

Public understanding of superannuation—Jargon

It is commonly accepted that there is a general lack of financial literacy in the community. As the Committee is aware, the complexity of and large amount of jargon in the taxation and superannuation systems make it even more difficult for many people to have the proper understanding needed to plan their retirement savings.

We submit that the Bill as currently drafted will exacerbate this problem.

In particular, we would like to highlight two places where the Bill introduces unnecessarily confusing jargon to represent key ideas.

- (i) "Registrable Superannuation Entity licence". We submit that the term "superannuation trustee licence" which had been proposed in the July 2003 exposure draft of the Bill would be much clearer and more easily understood¹ in the superannuation industry and by the general public.

The term "Registrable Superannuation Entity licence" (RSE licence) is triply confusing.

- (a) It introduces the new term "Registrable Superannuation Entity" (RSE). This term will add to the existing, confusing range of similar terms such as "superannuation entity", "eligible superannuation entity", "regulated superannuation fund", "resident regulated superannuation fund" and "complying superannuation fund". We submit that it should be possible to use existing terms rather than introducing

¹ While we understand that trustees of self-managed superannuation funds and exempt public sector superannuation schemes will not require a licence, we do not believe that this would lead the term "superannuation trustee licence" to cause significant confusion.

the new term RSE. For example, the Bill could be amended to state that certain parts do not apply to self-managed superannuation funds.

- (b) The *RSE* licence (and the licence number) in fact applies to the *trustee* of an RSE, not to the RSE itself.
 - (c) The abbreviation RSE would easily be confused with the existing, commonly used abbreviation RSA (Retirement Savings Account).
- (ii) “Risk Management Strategy” (RMS). This term has the same abbreviation and a similar name to the existing superannuation term Risk Management Statement. However, the Risk Management Strategy has a very different effect to the Risk Management Statement. The former refers to the total risk management measures and procedures for a superannuation trustee; the latter refers to the very limited area of risks relating to investments in derivatives.

We note in passing that the proposed regulations will also add to confusion for members, trustees, regulators and others in the industry by giving terms such as “key person” different meanings under the Safety in Super regime and the ASIC-regulated Financial Services Reform (FSR) regime. This would be in addition to existing terms (such as “responsible officer”) which already have inconsistent definitions.

Public understanding of superannuation—Identifying numbers

The Bill also adds two new entries to the already confusing array of identifying numbers applying to superannuation funds. The RSE licence number and RSE registration number are in addition to the ABN, ACN, SFN, TFN, AFSL number, SPIN, and ARSN which already apply to superannuation funds and/or their trustees.

We note three issues arising from the new numbers.

Firstly, we submit that the introduction of the new numbers provides an opportunity to consolidate the range of identifying numbers.

In particular, we do not support the introduction of new identifying numbers. For example, it may be possible for the introduction of the RSE licence number to be replaced in the Bill by an extension of the uses of a corporate trustee’s Australian Business Number (ABN). Similarly, it would be possible for the introduction of the RSE registration number to be replaced by an extension of the existing Superannuation Fund Number (SFN) system.

Secondly, we submit that adjustments are needed to the proposed sections 29DC and 29MB. These sections require a very broad range of documents to quote, respectively, the RSE licence number and the RSE registration number. For example, the current drafting could be interpreted as requiring the trust deed constituting each superannuation fund to be amended to include the new identifying numbers, unless written approval is given to each trustee by APRA. This is presumably not intended.

Finally, we note the potentially significant printing costs required to comply. **We submit that a transitional period is required, in a similar fashion to Corporations Regulation 10.2.44A introduced under the Financial Services Reform regime.**

Overlap between APRA and ASIC

We submit that the Bill will increase the amount of duplication between the two regulators, APRA and ASIC.

For example, the proposed new section 29E(1)(f) of the SIS Act will require a licensed trustee to notify APRA of any changes in directors within 14 days. For corporate trustees, this information is already required to be provided to ASIC (albeit within 28 days). It should be sufficient to provide the information to one regulator only.

Similarly, Regulations made under the Bill will prescribe standards for outsourcing, clearly overlapping with ASIC's requirements on outsourcing which apply to Australian Financial Services licensees.

There will also continue to be overlap and duplication between the two regulators' responsibilities in relation to the significant issue of accounts and audits.

We also note that the Bill does not address the duplication in procedures required to obtain licences from both APRA and ASIC.

The Government's 2002 response to the Superannuation Working Group's report supported its recommendation to develop a single entry point for licensing by APRA and ASIC².

While we understand that it may not be feasible to create a single entry point for licensing as part of the Superannuation Safety Amendment Bill, we encourage such systems to be set up as soon as possible. Doing so would make it easier to provide consistency in the two regulators' requirements where their responsibilities overlap.

Breach of equal representation

The Bill proposes new SIS Act sections 63(7B), 63(7C), and 63(7D). These sections would, as a strict liability offence, forbid superannuation fund trustees from accepting contributions from an

² Recommendation 7 of the Superannuation Working Group's report stated: "*The SWG recommends that the Government consider streamlining arrangements for trustees required to hold both an APRA licence and an AFSL through the development of a single entry point enabling trustees to lodge only one application covering both licences. The single entry point would only apply to licences for an APRA licence and an AFSL submitted after commencement of the APRA licensing requirements...*".

The Government's response stated: "*The Government supports this recommendation in principle but considers that more work needs to be done to implement it. The Government supports measures to reduce unnecessary overlap and duplication. In developing the detail of the licensing regime, the Government expects both APRA and ASIC to work together to do this.*"

employer-sponsor if the fund does not meet the equal representation requirements. Currently the Act requires APRA to give a written notice directing the trustee not to accept contributions in this situation.

We oppose this proposed change in the strongest possible terms.

We submit that it is unclear how the proposed new sections would provide significant additional consumer protection. They would, however, result in extra administration work, and potentially costs, for both superannuation funds and employers. Potentially, to avoid breach of the superannuation guarantee requirements, employers would be required to find an alternative fund to accept their superannuation contributions during the period in which their original fund attempts to regain compliance with the equal representation requirements. In many cases this could also result in a breach of an Award or Australian Workplace Agreement.

We also note that the current drafting of the proposed subsections 63(7B), 63(7C), and 63(7D) is unclear and possibly unworkable. These subsections would prevent a fund trustee from accepting contributions from employer-sponsors while the fund does not comply with the equal representation requirements. However, section 89(3) of the SIS Act provides that if a trustee fills a vacancy within 90 days, it “is taken to have complied with the basic equal representation rules at all times during the period of the vacancy”. As a result, a trustee may not know until 90 days after a vacancy occurs whether or not it should have accepted contributions during that period.

Risk Management Strategy

The proposed section 29H of the Bill requires each superannuation fund trustee to prepare a Risk Management Strategy which includes:

“...reasonable measures and procedures that the body or group is to apply to identify, monitor and manage... risks arising from any changes to the RSE licensee law...”

We submit that it is not appropriate for a Risk Management Strategy to be limited in this way. Instead, the licensee should determine methods of handling all legislative requirements, not just “RSE licensee law”.

Should this restriction remain in the Bill, while noting that the Bill provides for particular legislation to be specified in Regulations, we submit that there are some significant omissions from the proposed definition of RSE Licensee Law in subsection 10(1). For example, the Privacy Act and superannuation guarantee legislation both have significant implications for risk management.