



393 Swanston St  
Melbourne  
Victoria 3000 Australia

TELEPHONE  
ISD (613) 9663 5266  
STD (03) 9663 5266

FACSIMILE  
(03) 9663 4051  
(03) 9663 8220

WEB  
[www.actu.asn.au](http://www.actu.asn.au)

PRESIDENT  
Sharan Burrow  
SECRETARY  
Greg Combet

4 February 2004

Dr Sarah Bachelard  
Secretary  
Senate Economic Committee  
Parliament House  
CANBERRA ACT 2600

Dear Dr Bachelard

### **Inquiry into the Superannuation Safety Amendment Bill 2003**

Thank you for your invitation to make a submission to the Committee's inquiry into the Superannuation Safety Amendment Bill 2003.

The ACTU participated in consultations with the Superannuation Working Group which made the report which led to this Bill. The ACTU's written submission to the SWG is attached to this submission.

### **Capital adequacy**

The ACTU largely supported the SWG's recommendations, although we did strongly oppose the recommendation that trustees be required to hold capital. The ACTU opposed this recommendation for two reasons: first, because it would be difficult, if not impossible, for unions and employer organisations, who generally "own" the trustee companies of industry funds, to be able to satisfy such a requirement and, second, because it is difficult to see how any realistic capital adequacy requirement would mitigate risk in a large fund.

This concern was also expressed by other non-profit superannuation fund sponsors, and seemed to have been accepted by the Government in its response to the SWG recommendations.

The ACTU has been alerted to the possibility that the Bill, through the addition of an ability for APRA to determine requirements for an approved guarantee [s11E] or through the possible use of the operating standard for human, technical and financial resources [s31(2)(sb)], could allow for the imposition of a requirement for capital adequacy on the trustees of not-for-profit funds.

The ACTU urges the Committee to recommend that the Bill be amended to make it clear that the current arrangements for capital guarantees are not to be altered.

**“Fit and proper” test**

In its submission to the SWG the ACTU pointed out that no fund failures had been associated with funds where employee representatives had been appointed by unions.

This fact highlights the value to funds of trustees (or directors of trustee companies) who are representative of employers and employees, irrespective of whether or not those individuals have relevant formal qualifications.

As recent history has shown, seemingly highly competent and qualified boards (with correspondingly high remuneration) have shown themselves unable to properly manage risk or operate their institutions with appropriate attention to prudential standards or even basic honesty.

On the other hand, not only have industry funds not been associated with financial failure, they are generally held to be the best performing funds in the country.

While individual trustees or directors should be capable of being disqualified for reason of dishonesty or reckless or gross negligence, the issue of competence should be judged on the basis of the trustee as a whole. As the Government stated in its response to the SWG report:

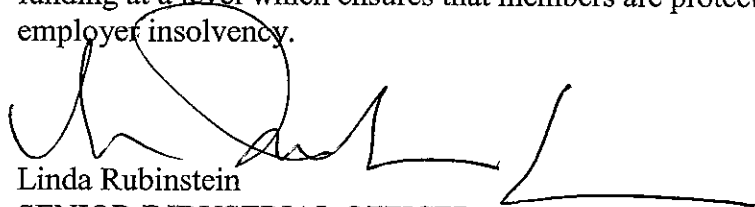
*“Either the trustee corporation or a ‘notional entity’ of individual trustees would be licensed. Trustees would be able to ‘buy-in’ expertise to demonstrate competence and other licence conditions.”*

The ACTU urges the Committee to recommend that the Bill make it clear that the competence standard will be set in a way which ensures that the current system of employer and employee representation on superannuation boards will be able to be maintained.

**Defined benefit funds**

The recent issues relating to the Ansett Ground Staff Superannuation Plan have highlighted for the ACTU, and for many members of defined benefit corporate funds, the risk involved with inadequate funding of these schemes.

The ACTU supports the proposed “whistle blower” provisions in the Bill, but submits that far more is required to ensure that fund members are kept informed about the reserve levels of defined benefit funds, and that employers are required to maintain funding at a level which ensures that members are protected even in the case of employer insolvency.

  
Linda Rubinstein  
SENIOR INDUSTRIAL OFFICER