

Senate Select Committee on Superannuation and Financial Services

Main Inquiry Reference (b)

Submission No. 10

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**PUBLIC SUBMISSION TO THE
SENATE SELECT COMMITTEE
ON SUPERANNUATION AND
FINANCIAL SERVICES**

First Inquiry
April 2000

Terms of Reference

On 22 September 1999 the Senate resolved that:

- (1) A Select Committee on Superannuation and Financial Services be appointed with effect on and from 11 October 1999, with the same functions and powers as the Select Committee on Superannuation appointed by resolution of the Senate on 5 June 1991, and reappointed on 13 May 1993 and 29 May 1996, except as otherwise provided in this resolution.
- (2) The committee inquire into matters pertaining to superannuation and financial services referred to it by the Senate and inquire initially into:
 - (a) prudential supervision and consumer protection for superannuation, banking and financial services;
 - (b) the opportunities and constraints for Australia to become a centre for the provision of global financial services; and
 - (c) enforcement of the Superannuation Guarantee Charge;and report on paragraphs (a), (b) and (c) by the last day of sitting in June 2000.
- (3) The committee have power to consider and use for its purposes the minutes of evidence and records of the Select Committee on Superannuation appointed in the previous three Parliaments.
- (4) The committee consist of 7 senators, 3 appointed by the Leader of the Government in the Senate, 3 nominated by the Leader of the Opposition in the Senate and 1 nominated by the other parties or independent senators.
- (5) The nomination of the final member to be determined by agreement between the other parties and independent senators and, in the absence of agreement, duly notified to the President, the question of representation on the committee of other parties or independent senators be determined by the Senate.
- (6) The Senate, by subsequent resolution, appoint a member of the committee as its chair.

Introduction

AMP is one of the world's leading financial services businesses providing around eight million customers world-wide with wealth creation and asset protection products and services. Publicly listed on the Australian stock exchange with around 1.2 million shareholders, AMP, by capitalisation, is one of Australia's largest listed companies.

For most of the past century, AMP has been the largest life insurer in Australia and one of the largest in New Zealand. In recent years AMP has expanded through acquisition of several financial services organisations in the United Kingdom and by broadening the range of financial services and products it delivers to its customers.

AMP provides financial services and products to more than five million individual and small business customers. In addition it administers around 3 million company and industry-based superannuation and work-based pension accounts.

AMP's global asset investment and management business, operating under the auspices of Henderson Investors in the United Kingdom, currently manages funds worth over A\$259 billion. The client base is made up of corporate and industry superannuation funds, pension funds, corporations and individuals. The global investment management operations also manage AMP's statutory funds. The main business areas are asset management, property services, private capital, listed investment trusts, retail unit trusts and offshore funds distributed through a combination of both retail and wholesale channels.

AMP operates under the following brand names and through the following companies in Australia, New Zealand and the United Kingdom:

AMP Australia, AMP New Zealand, AMP Banking, Hillcross, Australian Administration Services, Pearl, Virgin Direct, Henderson Investors, London Life, NPI, AMP General Insurance, GIO Insurance, AMP Asset Management, AMP Asset Management New Zealand, Cogent and AMP Investment Administration.

Major AMP Products and Services

- Retail and wholesale superannuation, small and medium corporate superannuation, retirement income streams;
- Life and risk insurance, whole of life/mature life products, endowments, individual and group pensions and annuities;
- Unit trusts, managed investments and masterfunds, investment-linked savings, insurance bonds and investment accounts;
- Banking, mortgage lending, credit cards and term deposits;
- Financial planning and solutions;
- Corporate and industry fund administration and consulting services;
- Personal insurance, small and medium enterprise insurance (eg commercial, fleet motor, marine, public and product liability, workers compensation) general insurance, corporate insurance and reinsurance (in run-off); and
- Listed asset management, private capital and advisory services and property investment and management.

Specific Comment on Terms of Reference

- (a) *Prudential supervision and consumer protection for superannuation, banking and financial services.*

Australia's prudential supervision and consumer protection laws for superannuation, banking and general financial services are, in AMP's view, among the most comprehensive and effective in the world.

Since the division of responsibilities between the Australian Prudential Regulatory Authority (APRA), the Reserve Bank of Australia (RBA), the Australian Competition and Consumer Commission (ACCC) and the Australian Securities and Investment Commission (ASIC), stemming from the Government's response to the Wallis Inquiry, prudential supervision and supervision for consumer protection purposes has generally operated satisfactorily and effectively for the benefit of consumers and the market.

Given the extensive changes in consumer protection regulation foreshadowed in the draft Financial Services Reform Bill 2000 (the FSR Bill), AMP believes that it is not appropriate to make further detailed public comment on those matters at this time. Suffice to say that the major changes proposed in the FSR Bill, if enacted, will provide a more transparent, effective and efficient regime for providing comprehensive protection for consumers of financial services.

AMP considers the greatest protection for consumers of financial services is a transparent, efficient and competitive financial services market. To the extent that regulation and administrative conduct acts to stymie the capacity of financial service providers to respond expeditiously to consumer needs, the financial services market is less able to contribute to the growth in individual and community wealth.

Experience from throughout the world demonstrates the risk to consumers of financial services of markets that are constrained by artificial, regimented, legalistic regulation intended to provide a sense of security through conformity. Such markets are inevitably slow to respond to consumer needs. Failure to facilitate a regime that encourages financial service providers to respond with innovation and expedition invariably leads to reduced consumer wealth and a rapid flow of capital to more liquid markets.

Equally important for the growth of a financial service market is transparency. The changes proposed in the FSR Bill to bring about greater disclosure are supported and endorsed in principle by AMP.

Whilst the new system is still in some regards being bedded down, AMP does have concern in respect of a number of matters that have come to attention in recent times. AMP believes consideration should be given by authorities to rectifying these matters in order to ensure that no systemic risk to the overall regulatory framework can develop as a result of these matters.

The matters AMP would like the Committee to consider at this stage are:

(1) **Experience of Regulators**

AMP is concerned at the level of practical experience of operational level regulators particularly those involved in supervising the superannuation industry. While appreciating that it is an on-going challenge for regulators to train and hold sufficient experienced staff, AMP is concerned that supervising regulators have yet to demonstrate sufficient feeling for the commercial operation of superannuation.

Two examples illustrate the concerns of AMP:

(a) **Employment after age 65**

It is Government policy for individuals to access their superannuation benefits for the purposes of retirement rather than as an accumulation for estate purposes. To achieve this end any person aged over 65 who has not sought to access their superannuation is required to demonstrate that they remain employed.

APRA have determined that in implementing this policy superannuation funds should audit the employment status of members over 65 years of age every month. It is the industry's contention that the receipt of superannuation contributions from an employer for an employee should be prima facie evidence of the continuing employment of that employee. In addition the industry contends that an annual statement by the member of their continuing employment, together with an obligation to notify trustees if employment ceases, should be sufficient.

APRA has rejected the industry's contentions on no less than 5 occasions. APRA's position demonstrates a lack of commercial reality and fails to balance the cost of administration with the potential for breach of Government policy. The failure of APRA to accept the industry's suggestion in this instance indicates a predisposition on behalf of the regulator to a formal, legalistic application of the law instead of a commercially sensitive, supportive partnership.

(b) **Binding Death Benefit Nominations**

The issue of binding death benefit nominations is an administrative nightmare. APRA have provided no leeway for a reasonable transition. APRA's position is contrary to the recommendations of the industry and has led to most trustees not taking up the provisions or abandoning their existing binding nominations because the new process is too difficult and unreasonable constraints have been imposed by APRA. AMP believes this is contrary to Government policy and most definitely not in the best interests of members.

(2) Education of Consumers

Superannuation choice is a reality in the commercial marketplace. It is inevitable that further commercial developments will increase the extent and scope of choice.

While these commercial developments have taken place against a background of proposed improvements in consumer protection and disclosure, the extent of consumer understanding and knowledge of superannuation remains low. Individual understanding and knowledge is in AMP's view the greatest protection a financial system can have integrated into it.

The involvement of supervisors/regulators and more generally consolidated revenue to assist in educating the general public needs to be given greater consideration.

It is the view of AMP that a major public education development program should be instigated by the Government, either through direct public education or via a publicly funded position such as a Retirement Commissioner. Such a position would have responsibility for monitoring the development of the industry and industry trends on a global scale; providing research on retirement incomes policy; the education of the public; and general advocacy for private savings. Given the extent of public savings generated by private retirement income provision, AMP considers it reasonable for a substantial public investment to be made in such a role.

(3) Relative Taxation Concession for Superannuation

There has been for many years now bi-partisan political support for the structure of Australia's superannuation (retirement incomes) system. This support has generated a significant degree of confidence among employees, albeit not with any greater understanding or appreciation of the importance of superannuation to Australia's retirement incomes system and national savings.

Critical to the continued relevance of superannuation is the establishment of a 'culture' of contribution and savings along with a greater acceptance of superannuation as retirement income. Central to the development of and continued relevance of superannuation will be its concessional tax treatment.

The announced reductions in personal tax scales, contained in the New Tax System, will reduce the relative advantage of superannuation and therefore the relative attractiveness of voluntary saving. Similarly the changes to Capital Gains tax have increased the attractiveness of investment of savings in short term capital growth products. Whilst this latter outcome has the potential to improve short term savings for some it does so relative to longer term savings through superannuation.

Consequently, in so far as individual investment of savings in assets now displaces investment in longer-term saving vehicles, such as superannuation, this relative change in attractiveness has the potential to increase the volatility of investment and therefore the cost of stable capital.

AMP would encourage the Government to give consideration to maintaining the relative attractiveness of superannuation as a long-term savings vehicle.

Specific Comments on Terms of Reference

(b) the opportunities and constraints for Australia to become a centre for the provision of global financial services.

AMP acknowledges the effort the present Government has made to examine and consider the potential for Australia to become a centre for the provision of global financial services. The profile this opportunity has been given by the specific appointment of a Minister with responsibilities for this task, together with the creation of a specific Centre to examine the issues (the Australian Centre for Global Finance) is both welcomed and applauded.

Similarly, AMP acknowledges the on-going policy developments that this Government has undertaken to support the development of a global focused domestic economy. Such policies have been crucial to Australia's economic position in recent years and follow on from major initiatives undertaken by former administrations to open the Australian economy and to provide access to world markets for Australians.

AMP strongly endorses the adoption by the Australian Government of outward looking, realistic and balanced policies that seek to harmonise the regulatory framework in which Australian financial services are provided to the market place.

AMP would not support a policy of 'lowest common denominator' regulation as it is our belief that good policy that supports and encourages economic activity by individuals and corporations must be founded on the principle of transparency. This means that commercial regulation will support a financial services market if it seeks to enhance openness, disclosure, the transmission of information and consumer choice and confidence.

Given our endorsement of the principle of transparency, AMP is concerned that Government policy, particularly taxation and corporations policy, be determined upon transparent principles that are clearly appreciated and understood by the business community. Simply put, Australia will only become a centre for global financial services if, on balance, the relative advantages of purchasing financial services in Australia outweigh the relative costs. In making this determination consumers of financial services will give due consideration to a range of factors including the stability and transparency of public, fiscal and monetary policy.

To the extent that there is ambivalence in public policy setting, Australia's relative advantage as a centre is diminished. AMP considers there are a number of areas in public policy where Government and regulatory action could be better structured to achieve a more competitive position for Australia. In particular AMP notes:

(a) Taxation

The regional competitiveness of Australia's business taxation system and personal income tax system are major factors that undoubtedly influence Australia's relative claim to be a global financial centre. To a significant extent the reforms introduced by the Government over recent years have improved the relative position of Australia.

AMP recognises however the constraints that any Australian Government must consider when seeking to establish a taxation regime and, in particular, AMP acknowledges that there is a balance between revenue generation for the purposes of funding public services and the pursuit of other public policy objectives.

In attracting global financial services to Australia equal significance needs to be given to both the macro taxation policy settings adopted by the Government and the administration of the taxation system. AMP believes more can be done to improve the link between stated Government policy, the development of taxation law and the administration and practice of taxation authorities (Treasury and the Australian Taxation Office (ATO)).

In particular AMP has concerns with the operation of the Foreign Investment Fund (FIF) rules and the Controlled Foreign Company (CFC) rules.

Current FIF rules are inefficient, distorting and require Australian operations to incur significant transaction costs for no identifiable efficiency to Australia's taxation system. These rules would appear to be a classic case of utilising a sledge hammer to solve a perceived evasion problem.

The operation of these rules fails to recognise the significant investment that Australians now make overseas – investments that return positive inflows to Australia. In addition they fail to recognise the commercial reality of international investment. To make matters worse, recent changes to allow United States of America based mutual funds to invest in Australia have created a competitive distortion.

If the Government and taxation authorities are serious about creating an open commercial market for financial services then distortions of this nature should be removed quickly. The presence of such distortions do serious harm to the credibility of Australia's claims to being a leader in financial services and global finance.

Reforms to Australia's business taxation regime (the Ralph reforms) are welcomed by AMP as overdue and generally sensible. AMP is concerned that obvious distortions still exist (double taxation of foreign profit).

Furthermore, AMP believes that vital and significant taxation reforms have been curtailed because of an overriding concern within authorities, particularly the Treasury, of the possible revenue implications for the Government. The Treasury, on occasions, would appear to be unprepared to support reforms because of an apparent preoccupation with theoretical and arguable revenue models. This is not a new problem for business, but its significance is increasing.

Whilst AMP recognises the constraints upon the Government, it believes it is not appropriate for the bureaucracy to publicly advocate a desirable goal (Australia as a global financial centre) and at the same time argue against measures that would clearly attract capital to Australia and which would make the raising of capital in Australia internationally competitive.

AMP is concerned at examples of taxation authority behaviour that clearly discourages parties from a disposition to source/fund capital in Australia.

Recent consideration by Australian taxation authorities of the position of hybrid capital products in the form of income securities demonstrates the difficulties for Australian businesses in proposing new or innovative ways of raising capital.

While at the time of writing AMP is awaiting the ATO's ruling on these products, we are concerned that these products have been allowed to be established in Australia, on the basis of a public ruling that was, after the rise of these securities, withdrawn.

If Australia is to develop as a centre for global financial services there must be certainty of both policy interpretation and practice by revenue authorities leading to clear and transparent administration of taxation laws.

AMP believes the ATO and Treasury have a key role to play in the development of Australia as a financial services centre however this role cannot be played if one or both organisations operate under contradictory mandates.

Business values certainty. Administrative action to amend generally understood rules without the establishment of alternative rules serves only to discourage certainty and the perception of Australia as a leader in private finance.

AMP recognises that taxation reforms, both implemented and proposed, have been extensive and far reaching. AMP has considerable concern as to the ability of authorities to manage the extent of these reforms.

AMP is concerned that, as a result of uncertainty in the application of the new laws and the presence of a tax raising mandate in both Treasury and the ATO, a general disposition will exist among taxation authorities to prefer revenue raising to smooth policy implementation during the introduction phase of the New Tax System.

With the ready capacity of capital to find international safe havens in times of uncertainty, AMP remains concerned that any failure to pragmatically apply the new tax regime (both personal and business) will result in significant damage to Australia's reputation.

Any failure by relevant authorities to demonstrate a grasp of commercial reality and any failure by the political system to support the genuine efforts of business to implement the New Tax System will have serious ramifications for the perception of Australia as an open, market oriented, competitive economy let alone as a centre for global financial services.

(b) Education and Training

Australia's education and training facilities must be able to deliver sufficient quantities of highly educated and capable people to service a centre for financial services. This will require support for and encouragement of even greater levels of computer and language literacy at all levels of Australia's education system.

In addition Australia's capacity to entice and hold foreign nationals working in Australia with highly desirable qualities and skills will depend on the attractiveness of packages designed to support them in Australia. Personnel policies that adopt world's best practice and taxation regimes that facilitate and recognise the reality of an international labour market in certain skills are key ingredients to developing the global centre that the Government has been proposing.

(c) Liquid Government Bond market

AMP notes the Government's stated target of halving the ratio of Commonwealth General Government net debt to GDP over 5 years to 2000-01 and its reference to the potential for eliminating net Commonwealth Government debt. While acknowledging there are social and political arguments in support of such a policy, AMP also considers there is merit in retaining a liquid government bond market so as to establish an Australian domiciled 'risk free' long term interest rate.

AMP notes that the Government's assumptions on eliminating all debt are predicated upon the full sale of Telstra. Also AMP notes that the Government has indicated its intention to retain a government bond market.

Whilst the development of a private capital bond market has progressed substantially in recent times, AMP considers that there is merit in the Government maintaining, at least in the short to medium term, a Government bond program. Australia's position as a centre for global financial services would in AMP's view be enhanced through a deepening of the private debt market. This can be facilitated through the operation of a vigorously competitive government debt facility.

(d) Interaction between regulators and the regulated

As mentioned earlier, AMP considers there is merit in regulators adopting a commercial focus and understanding in their dealings with business. AMP appreciates that the call for greater understanding between regulators and the regulated is not new and that there is a two-way street to this line of argument.

Nevertheless, AMP is of the view that a program of secondments from both the ASIC and the APRA for short periods of time in operational areas of various businesses would provide a valuable and transparent vehicle for establishing a greater appreciation by regulators of the day to day difficulties faced by businesses, particularly in the superannuation industry.

In addition, AMP would like to see a more open and interactive relationship develop between officials of both the ASIC and APRA and business. Adoption of more regular discussion forums and a level of social interaction would assist in the development of genuine personal trust and a greater appreciation for all of the roles of the public and private sectors.

Specific Comments on Terms of Reference

(c) enforcement of the Superannuation Guarantee Charge

AMP supports moves to require more regular payment of the superannuation guarantee charge. Developments in electronic commerce and Internet banking in particular provide the opportunity for more consistent and regular payments thereby reducing the possibility of fraud and providing more immediate detection of defaults.

AMP believes requiring payments to be made at least quarterly and possibly even monthly would be appropriate.

In addition AMP believes the Government should look at providing broader powers and discretions to the Taxation Commissioner in respect of late payments. Current penalties are harsh and provide a disincentive to employers to voluntarily disclose non-payments or difficulties in paying.

The development of a transparent reporting mechanism to employees in such circumstances would both encourage compliance by employers and alert employees and their representatives of any possibility of long-term default.

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