


**Senate Select Committee on
Superannuation and Financial Services**

**Main Inquiry
Reference (a) + (c)**

Submission No. 22

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**THE SENATE SELECT COMMITTEE ON SUPERANNUATION AND
FINANCIAL SERVICES**

**SUBMISSION OF THE AUTOMOTIVE, FOOD, METALS,
ENGINEERING, PRINTING AND KINDRED INDUSTRIES UNION**

Introduction

1. This submission is directed at the following two issues:
 - (a) prudential supervision and consumer protection for superannuation, banking and financial services;
...; and
 - (c) enforcement of the Superannuation Guarantee Charge.

In particular, the submission concentrates on:

- 1.1 the extent to which prudential supervision restricts or impedes investments targeted towards goals that are not solely identified by considerations of risk and return;
- 1.2 protecting potential clients of occupational superannuation schemes against being missold superannuation plans; and
- 1.3 problems with the current system of ensuring employers make the requisite level of contributions, on behalf of their employees, as required by occupational superannuation laws.

The Automotive, Food, Metals, Engineering, Printing And Kindred Industries Union

2. The Automotive, Food, Metals, Engineering, Printing And Kindred Industries Union (AMWU) is a trade union with 166 000 members engaged in a broad range of industries. Also, office holders of the AMWU sit on the board of management of several large industry superannuation funds such as the Superannuation Trust of Australia, the Printing Industry Superannuation Fund, the Food Industry Superannuation Trust, SunSuper Superannuation Fund as well as some large corporate funds, e.g. the BHP Superannuation Fund.

3. The AMWU's interest in the inquiry comes from its desire to ensure that occupational superannuation in Australia is managed in a manner that contributes to the following objectives:

- 3.1 the delivery of a sizable supplement to retired workers' state pensions, thus enabling retired workers to live out their lives in relative prosperity and comfort;
- 3.2 ensuring that workers' contributions held in superannuation funds are safe and that a reasonable rate of return is generated on their savings;
- 3.3 having workers' savings held in superannuation funds invested in a secure manner that returns not only interest, but goes towards broader social goals such as creating employment opportunities by promoting Australian industry; building infrastructure; improving access to

housing; and generally, investing with a social conscience and consistent with the aspirations of the superannuation fund members;

3.4 ensuring that workers are not misled about superannuation, thus inducing workers to participate in superannuation plans that are inferior to industry funds that operate in the worker's area of work; and

3.5 creating systems that guarantee that workers' contributions to superannuation funds are promptly paid into their chosen fund at regular intervals (such as monthly)

Prudential supervision and targeted investment

4. The AMWU submission on the prudential supervision of superannuation funds is confined to the interaction of prudential supervision and social responsible investment and economically targeted investments. This issue was examined by the Senate Select Committee on Superannuation and Financial Services (Committee) and reported on in *Investment of Australia's Superannuation Savings*, [21st Report] December 1996.

5. In *ibid.* at para. 2.46 (p. 21) the Committee cited with approval the following passage:

Notwithstanding the difficulty faced by trustees in identifying, analysing and accessing suitably structured non-traditional investment opportunities, the take-up of these opportunities by trustees offers a potential 'win/win' outcome for both superannuation fund members and the community at large. Trustees should therefore be encouraged and assisted to explore new areas of investment potential.

The AMWU concurs with the remarks set out above. However the question remains, what can be done to "assist" trustees to "explore new areas of investment potential"?

6. As to economically targeted investments (ETIs) the Committee reported at para. 2.51 (p.22):

In Australia, ETIs which provide competitive risk-adjusted rates of return will not violate a trustee's fiduciary duties. Even if a targeted investment offers a lower rate of return, trustees may be able to establish prudence because of the role that the particular investment plays in the diversification or stability of the portfolio ... ;

and at para. 2.5.4 (p. 23):

Accepting that targeted investments producing significant collateral benefits, but lower returns, are not allowable in Australia, section 52(4) of SIS becomes relevant. That section enables members to give investment directions to trustees and may provide for members to make informed choices of investments yielding lower returns.

7. The Committee also concluded that the government should facilitate superannuation investments in infrastructure (para. 3.29, p.34). Also, in regard to small and medium sized enterprises (SMEs), the Committee noted that the growth of superannuation funds had the potential to divert capital away SMEs' traditional source of finance, namely, banks. To facilitate superannuation funds investing in SMEs the Committee recommended that the government investigate the establishment of a credit-rating system (Recommendation 4.1, p. 37).

8. The Committee's report is thus interpreted as being favourable to the concept of superannuation funds broadening their investment horizons outside of the traditional portfolio, and the Committee recognised the collateral benefits that flow to the community when funds take such an approach. The

Committee also took the view that prevailing prudential standards can accommodate ETIs etc. as long as the relevant considerations are made by trustees.

9. Nevertheless, the AMWU believes more can be done to facilitate ETIs and socially responsible investment, and to do so is in the public interest. The level of debate and interest on this subject has not extended to the broader community despite the fact that superannuation has become pervasive in our society. As the Committee noted at para. 237 (p. 19):

From anecdotal evidence and other impressions in recent years, there is a discernible sense of powerlessness on the part of many members of superannuation funds. The Committee believes there is generally an acceptance and approval in the community of the superannuation regime now firmly established in this country. It seems, however, that there is a lack of a sense of 'ownership', or involvement, by members of funds and the Committee believes that offering more education, information and choice may be part of the answer.

10. Also, there could be more done by government to integrate the mechanisms for prudential supervision with channels and systems for ETIs by superannuation funds. Government departments that oversee industrial development, in combination with relevant regulatory authorities such as the Australian Prudential Regulation Authority, in consultation with interested parties, could develop guidelines and standards for ETIs. This approach could give fund trustees the impetus and confidence to shake off their "reckless conservatism" and begin to better utilise some of the \$415 billion in superannuation fund assets.

Consumer protection--workers being mis-sold superannuation plans

11. This issue, which goes to information asymmetries between superannuation funds and their potential members has been extensively dealt by earlier by the Committee (eg. the Committee, *Choice of Fund*, [28th Report] March 1998). Moreover, the *Choice of Superannuation Funds (Consumer Protection) Bill 1999* goes some way towards ameliorating the existing deficiencies in disclosure and the consequences of workers being mis-sold superannuation plans.

12. Nevertheless, there is still much to do to create a situation whereby workers are in a position to make an informed choice over the suitability of a particular superannuation plan. In this regard, the AMWU supports a rigorous regime of full and complete disclosure which:

12.1 highlights all fees, charges and commissions, alongside their effects--both immediate and long term--on the growth of a member's account;

12.2 gives a comparison of performance with the relevant industry fund; and

12.3 contains an independently compiled assessment of risk and performance in a standardised and comprehensible format.

Enforcement of the Superannuation Guarantee Charge

13. The AMWU contends that the Superannuation Guarantee Charge (SGC) in its current form is not effective in ensuring that workers get the full benefit of the occupational superannuation to which they are entitled. The principal problem arises from the requirements governing the frequency of contributions, but ancillary problems include the deficiency in ensuring prompt compliance, the inadequacy of penalties for non-compliance and the compliance mechanisms in general.

Frequency of contributions

14. Although the *Superannuation Guarantee (Administration) Act 1992* (Act) theoretically compels quarterly contributions (the "contribution period" is so defined in s. 6), the effect of s. 23A is that an employer can avoid paying the SGC by covering all the contributions periods in a year by making a payment on the 28th day after the end of the financial year in which contributions were due. This payment will then be taken to have been made for the contribution periods which fall in the preceding financial year, in other words, it is open to employers to make payments annually.

15. Nonetheless, one can argue that the latitude allowed for in the SGC is compensated by other mechanisms: it is often the case that superannuation funds' trust deeds and rules and industrial awards specify that contributions be made monthly, quarterly or other periods more frequent than annually. Therefore, one can view the SGC as a back-up to other layers of legal obligation to pay superannuation contributions.

16. The SGC obligations as to timing of payments are blind to contribution frequency provisions in superannuation funds' trust deeds and rules and industrial awards. An employer who is in breach of a superannuation fund's rules and/or industrial award's provisions governing the date of contributions will not necessarily be subject to any penalty under the Act. Also, the body which has the principal role in administering the Act, the Australian Taxation Office (ATO), is only concerned with ensuring compliance with the SGC, thus a complaint to the ATO about late payments of superannuation contributions will not be their concern.

17. The AMWU identifies the following problems that may arise when payments are made annually instead of more frequently as often prescribed by the superannuation fund's rules:

17.1 many superannuation funds incorporate a death/total and permanent disability benefit as part of the overall package. What can and frequently does happen when an employer pays an employee's superannuation contributions annually in defiance of superannuation fund's rules and/or industrial award's provisions requiring more frequent payment is that the death/total and permanent disability benefit deactivates. If an employee dies or otherwise becomes eligible for such a benefit she or he or her or his beneficiary or beneficiaries may lose out on the expected benefit. Indeed, according to N Wilkinson, Acting Chairman of the Superannuation Complaints Tribunal (as reported in *Australian Super News*, CCH Issue 2, 24 February 2000, pp. 13-14):

--most members under 50 have more money in their insured death benefit and TPD cover than in their account balance

--half the SCT complaints lodged within jurisdiction involve an insured disability or death benefit (p. 13)

and;

where premiums are based on contributions received from the employer rather than on member account balances, and there is an erratic pattern of contribution, the trustee, member and insurer may not know who is insured at any particular time. (p. 14)

17.2 If payments are made annually as opposed to monthly, a greater amount of an employee's money is held by her or his employer for a longer period. This could well expose the employee's

money to risks arising from the employer becoming insolvent during the year. It is argued that money held by a superannuation fund is safer than monies kept by the employer.

17.3 Contributions made more frequently would probably attract greater investment returns. While the sums involved in any one year might not be large, over an extended period of 30-40 years the amounts would be considerable.

18. With all of the above taken into account, the first line of defence against employers making late payments lies with the employee, their union and the superannuation fund. Indeed, it was vigilance by employees and their union (the AMWU) that detected one of the most serious recent cases of non-compliance of superannuation obligations by an employer. The case in point is that of the Austral Pacific Group Limited, a vehicle manufacturer, which went into liquidation owing its employees over half a million dollars in superannuation contributions.

19. Also, the AMWU's front-line operatives; shop stewards and organisers, can give numerous accounts of employers falling into arrears in making superannuation contributions. Below is a list of companies identified by AMWU's organisers in response to a memorandum distributed among them in March 2000 asking them to give recent examples of late or missed payments of superannuation contributions:

19.1 C & G Constructors of PO Box 1946 North Ryde NSW - the AMWU has made a claim for arrears for 13 members working the Hunter Valley region of NSW;

19.2 Process Pack Pty Ltd of 1/29 Swift Way, Dandenong, VIC - this company has made payments annually, which means that the life insurance policy that is part of superannuation plan lapsed;

19.3 Capital Tools of Hamilton, VIC - this company is currently about 6 months behind in contributions;

19.4 Portland Industries of Portland, VIC - this company went insolvent with 9 months' worth of contributions in arrears;

19.5 Press Power Australia of Welshpool, WA - the company went insolvent in 1999 with about a year's superannuation contributions in arrears for about 30 employees;

19.6 Booningi Pty Ltd t/a Action Press of Morley, WA - 4 or 5 employees had a substantial amount of superannuation contributions missing when the company became insolvent;

19.7 Sands Print of Bassendean, WA - in respect of about 40 of employees, contributions were made yearly. Also, there were employees with two years' worth of contributions in arrears. Now, due to pressure by the AMWU the company is paying contributions weekly and arrears are being made up;

19.8 Fairplay Print of Osborne Park, WA - for about 25 employees the situation was similar to that described at Sands Print. As part of negotiations over retrenchments arrears are being sought; and

19.9 Uncle Tobys of Wahgunyah, VIC - in respect of about 80 AMWU members (the situation is unknown for the approximate 1 000 other employees) payments were made late in the second half of 1999. It was only through the efforts and enquiries of the AMWU shop steward, Andrew Roach, that the problems were sorted out in time to prevent the lapse of the relevant fund's death and TPD cover.

20. Perhaps one of the vivid and compelling cases for ensuring that superannuation contributions are paid on time for fear of being disentitled to a death benefits occurred approximately 12 years ago. An AMWU organiser, John Walliss has a good recollection of key events, but the names and dates elude him (although an exhaustive investigation could probably supplement the details presented herein). While working in the AMWU's Sydney office Mr Walliss was approached by a member of the union who was described as a male New Zealander of about 25 years of age. He explained that a shop steward at a Sydney CBD unionised building site had refused to let him start work because he had not joined the appropriate superannuation fund. Mr Walliss explained to the member how he could join the appropriate fund, which is what the member did, and subsequently he was permitted to start work on the site. About a week later the member was killed on site when he fell. The superannuation fund later paid a death benefit of \$25 000--of course, this payment would have been imperilled had the shop steward not insisted that the member join the fund before starting work.

Recommendations--enforcement

21. The above examples demonstrate the role of union vigilance in ensuring that workers' benefits are protected. In this regard, the AMWU recommends to the Committee that there should be an augmentation of union rights so as to allow unions to enter an employer's premises and other places where employment and superannuation records are kept and inspect and copy documents and records etc. that pertain to worker's entitlements. Also union officials and site representatives should be given the right to interview employees regularly so that they can ensure that their entitlements are being met in a timely and correct fashion. These rights should be set out clearly in appropriate legislation such as the *Workplace Relations Act 1996*.

22. However, union and employee vigilance alone is not sufficient. Firstly, it cannot be expected that all employee and unions are adequately situated to monitor what occurs in regard to superannuation contributions for all workers. The AMWU recommends to the Committee that the Act should be amended to oblige employers to pay superannuation contributions monthly, the ATO should be given a broad range of discretionary powers to impose penalties on non-complying employers and that the Act also be amended to complement and support superannuation fund rules going to contributions. Also, the AMWU recommends that the network of industrial awards governing superannuation be maintained as a further bulwark against employer non-compliance.

31 March 2000

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