

CHAPTER 2

AUDITORS' ROLE AND OBLIGATIONS

2.1 This chapter considers:

- the role of auditors and actuaries under the SIS Act;
- the qualifications required of auditors;
- the obligations on auditors to report certain matters to the regulators; and
- the available remedies where auditors have not fulfilled their responsibilities.

What is the role of auditors and actuaries under the SIS Act?

2.2 Regulated superannuation funds are subject to strict financial management standards under the SIS Act. Part 16 of the SIS Act sets out the obligations for actuaries and auditors of superannuation entities (see **Appendix 4**).

Auditors

2.3 Two types of audits are required annually: an audit of the fund's financial statements and accounts, and, following legislative amendments in December 1995, a compliance audit.¹ The audits must comply with an approved form as set out in superannuation circulars² and must be given to the trustees within specified time limits (between four and nine months after the end of the year of income, depending on the type of fund).³

2.4 The financial statements have been developed to be consistent with audit reporting formats recommended by the professional accounting bodies. The compliance audit is required to reflect the entity's compliance with the requirements of the SIS Act for the whole year of income. Such matters include requirements relating to trustees' duties and restrictions on their activities, the appointment of investment managers, the provision of information to members and the keeping of minutes and other required records. From 1996/97, the approved form for an auditor's report included the concept of *materiality*, that is, an auditor must qualify an audit report where he or she is of the opinion that an identified breach is material.

1 SIS Act s. 113.

2 For example, APRA *Superannuation Circular No. IV.A.4: Responsibilities of the Approved Auditor August 1999*; ATO *Superannuation Circular No. 1/2000* for self-managed superannuation funds.

3 Within four months for public offer entities, other than excluded public offer funds; within nine months for self-managed superannuation funds; and within six months for any other superannuation entities.

Actuaries

2.5 Only defined benefit funds are required to have an actuarial investigation at least once every three years.⁴

Who may be an auditor or actuary under the SIS Act?

2.6 An 'approved auditor' of a superannuation entity other than a self-managed superannuation fund regulated by the ATO must be:

- the Auditor-General of the Commonwealth, a State or Territory; or
- a registered auditor under the Corporations Law who is either associated in the prescribed way with a specified professional accounting organisation or is approved by the regulator.⁵

2.7 For the small self-managed superannuation funds regulated by the ATO the rules are somewhat more flexible. An approved auditor must be:

- the Auditor-General of the Commonwealth, a State or Territory;
- a registered auditor under the Corporations Law; or
- associated in the prescribed way with a specified professional accounting organisation.

2.8 Regulations under the SIS Act provide that the following associations are acceptable:

- membership of the Australian Society of Certified Practising Accountants, the ICAA or the NIA;
- membership or fellowship of the Association of Taxation and Management Accountants; or
- fellowship of the National Tax and Accountants Association Ltd.⁶

2.9 An actuary under the SIS Act is a person who is a Fellow or Accredited Member of the Institute of Actuaries of Australia.⁷

What are the reporting obligations of auditors?

2.10 Under Part 16 of the SIS Act some reporting obligations are mandatory while others are discretionary.

4 SIS Act s. 31; regs 9.25 - 9.33.

5 SIS Act s. 131 and reg 1.04. Reg 1.04(2A) which allows for approvals by the regulator may cover, for example, persons whose religious or political beliefs do not allow them to be members of a professional accounting organisation.

6 Superannuation Industry (Supervision) Regulations 1994 Schedule 1AAA.

7 SIS Act, s.10.

2.11 Where a person carrying out auditing or actuarial functions forms the opinion that it is likely that:

- a contravention of the Act or regulations may have occurred or may occur, or
- the fund's financial position may be, or may be about to become, 'unsatisfactory',

the person must inform the trustee in writing about the matter.

2.12 The financial management standards set out in regulations under the SIS Act cover the circumstances in which a fund is considered to be in an 'unsatisfactory financial position'.⁸ Essentially, the auditor or actuary must consider that the superannuation fund's assets are inadequate to cover the fund's liabilities.

2.13 As well as informing the trustee of any problems, the auditor or actuary may tell the regulator. If the auditor or actuary does not do so, he or she must request the trustee to provide a written report within a reasonable time about the action the trustee has taken or proposes to take to remedy the problem. If the trustee does not comply, or if the auditor or actuary is dissatisfied with the trustee's action or proposed action, the auditor or actuary must give the regulator a written report on the matter.⁹

What action may be taken against auditors?

2.14 Auditors who do not provide their reports to the trustees within the required time may be prosecuted for an offence under the Act.¹⁰ Any person who knowingly gives false or misleading information to the regulators is also guilty of an offence.¹¹

2.15 The regulators may also disqualify a person from being an approved auditor if the person:

- has failed to perform adequately and properly the duties of an auditor under the SIS Act or any auditors' duties required by law; or
- is otherwise not a fit and proper person to be an approved auditor.¹²

2.16 The regulators may also refer details of a matter to a professional body for consideration of disciplinary or other action.¹³ Such referrals are subject to secrecy obligations.¹⁴

8 Reg 9.01 to 9.45, especially regs 9.03-9.04.

9 SIS Act ss. 129(6), 130(5).

10 SIS Act s. 113.

11 SIS Act Part 26.

12 SIS Act s. 131.

13 S. 131A.

14 Under *Australian Prudential Regulation Authority Act 1998* s. 56 if APRA is the regulator and s.252C of the SIS Act if the Commissioner of Taxation is the regulator.