

CHAPTER 5

TRUSTEE REPRESENTATION

5.1 Given the increasing importance of superannuation in personal wealth (see Table 5.1) the Committee believes that the issue of representation on trustee structures assumes increased significance. In this chapter, the term 'trustee' should, depending on the context, be taken to mean:

- a natural person who is a trustee of a fund;
- a corporation which is the trustee of a fund; or
- a natural person who is a director of a corporate trustee.

Table 5.1

THE ASSETS AND LIABILITIES OF THE HOUSEHOLD SECTOR			
	% change 1981-1989		
	nominal	real	real per capita
Monetary Assets:			
Notes and Coin	144	31	16
Deposits	185	53	36
Other Financial Assets:			
Equities	254	90	69
Unit Trusts	1315	660	574
Public Sector Securities	-14	-54	-59
Superannuation and Life Insurance	339	136	110
Total Financial Assets	245	85	64
Physical Assets:			
Owner-occupied housing	190	56	38
Investment housing	157	38	22
Consumer Durables	120	18	5
TOTAL ASSETS	193	57	40
Liabilities:			
Mortgages	168	44	28
Other Borrowing	176	47	31
TOTAL LIABILITIES	171	45	29
NET WORTH	196	59	41

Source: RBA Bulletin, November 1991

5.2 The Committee received a range of views about possible changes to existing requirements for trustee representation. Under current rules, only private sector funds established on or after 16 December 1985 and public sector funds established on or after 25 May 1988 with 200 or more members are required to have equal member and employer representation. Using figures provided by the ISC for 1987-88, this represents less than one per cent of all superannuation funds (see Table 5.2). From 1995, all funds

with 200 or more members will be required to have equal employer/employee representation. However, master trust arrangements can obtain exemptions under OSSA for equal employer/member representation.

5.3 Some of the points put to the Committee are that:

- current arrangements and those foreshadowed to apply from 1995 are satisfactory;¹
- further proposals on trustee representation should be deferred until after 1995;²
- all trustees should be required to be members of the fund;³
- member representative trustees should be elected by the members;⁴
- equal representation of members and employers on trustee boards or management committees should be extended to all schemes with arms' length members;⁵
- the concept of equal representation and employee members is appropriate for large industry-based funds but there should be no compulsion for smaller funds;⁶
- equal employer/employee representation rules are inappropriate for public funds and life office master trusts;⁷
- the appointment of an authorised public trustee corporation as trustee should be considered;⁸
- participation of employers and employees in the trustee function is inconsistent with the prescribed interests provisions of the Corporations Law and so a board of management advising an independent public trustee may be more appropriate;⁹

¹ Sub Nos. 100, 151.

² Sub Nos. 89, 73.

³ Sub Nos. 8, 52.

⁴ Sub Nos. 107, 26, 52, 82.

⁵ ALRC recommendation plus Sub Nos. 79, 90, 128, 113.

⁶ Sub No. 95.

⁷ Sub Nos. 138, 73, 120.

⁸ Sub No. 156.

⁹ Sub Nos. 119, 117, 120 and 156.

Table 5.2

ALL SUPERANNUATION FUNDS : NUMBER OF FUNDS BY INDUSTRY CATEGORY AND MEMBERSHIP SIZE - 1987-88
(Number)

Industry Category	Not Stated	Membership Size										Total
		0	1 to 2	3 to 5	6 to 10	11 to 50	51 to 199	200 to 500	501 to 1 000	1 001 to 10 000	More than 10 000	
1986-87	3 217	227	92 138	19 289	5 092	4 768	1 481	486	185	202	48	127 133
1987-88	3 515	54	83 575	17 145	4 436	4 266	1 533	488	219	248	51	115 530
1987-88 -												
Agriculture, Forestry, Fishing & Hunting	163	2	5 164	1 608	288	149	40	11	1	3	-	7 429
Mining	41	1	688	137	41	104	54	24	8	13	-	1 092
Manufacturing	358	4	6 800	2 426	893	1 025	493	197	86	75	3	12 350
Construction	33	1	1 128	271	40	31	4	5	-	4	-	1 517
Electricity, Gas & Water	307	7	9 802	2 073	463	371	86	19	5	8	3	13 144
Wholesale & Retail Trade	700	11	17 390	4 842	1 178	958	216	46	15	17	2	25 375
Transport & Storage	126	3	3 824	819	209	217	63	13	7	13	2	5 296
Communications	42	-	1 139	155	59	88	46	19	9	9	-	1 566
Finance, Property & Business Services	694	11	18 477	2 493	695	580	195	56	32	21	2	23 246
Community Services	196	3	6 140	547	149	235	122	28	10	8	-	7 438
Recreational, Personal & Other Services	354	11	11 331	1 437	308	284	77	13	2	8	2	13 827
Fund membership covers a large number of industries	31	-	785	211	99	187	132	56	44	69	36	1 650
Not Stated	470	-	926	126	34	37	5	1	-	-	1	1 600
TOTAL	3 515	54	83 575	17 145	4 436	4 266	1 533	488	219	248	51	115 530

Source: ISC

- where representation on boards of trustees is equal as between employers and employees, there should be an outside chairperson with no voting rights. This would facilitate consensus;¹⁰
- for funds with 100 or more members or \$5 million in assets there ought to be a requirement for an independent trustee;¹¹
- investors in master trusts do not have effective representation;¹²
- there should be a requirement for a minimum number or proportion of the board of trustees to comprise persons competent in superannuation;¹³
- it is not necessary to have public trustees because the manager will generally have better resources and skills to discharge fiduciary duties;¹⁴ and
- trustees should be required to undergo specialist education.¹⁵

5.4 Traversing this contentious ground has not been easy for the Committee. The Committee believes that the issue of trustee representation can be separated into distinct parts:

- firstly, whether member representation is desirable and if so, the threshold level at which this should apply. Related to this issue is whether trustees should be elected or nominated by employer and employee groups;
- secondly, the need for an independent trustee on employer-sponsored and industry funds or whether there should be an independent custodial trustee;
- thirdly, whether minimum education qualifications should apply; and
- fourthly, the particular circumstances of master trusts and whether a private sector public trustee should be required for life office master trusts.

¹⁰ Sub Nos. 138, 141.

¹¹ Evidence, p 623.

¹² Sub Nos 138, 141.

¹³ Sub No. 95.

¹⁴ Sub No. 105.

¹⁵ Sub Nos 66, 108, 119, 115.

Member Representation

5.5 Various witnesses have argued that member representation is in itself a good protective safeguard against fraud and malpractice. The Committee endorses the comments made by the ISC, the ACTU, ASFA and others that active member interest is a potent form of prudential supervision.¹⁶

5.6 Mercers argue that:

*Member trustees is something to be encouraged for two reasons: one, it engenders a spirit of cooperation between management and employees ... At the other level, our experience is that member trustees become the best salesmen for superannuation in the work force. If they believe in it, and see the benefits of it, they spread the gospel.*¹⁷

5.7 Leaving aside the issue of master trusts, most submissions to the Committee supported member representation on trustee structures for large funds. One of the few to not support this principle was Mr W A Lee, who objected to the requirement for equal employer/employee representation on the following grounds:

- neither representatives were selected for their expertise; and
- decisions by employee/employer representatives may be guided by political, rather than purely financial policies.¹⁸

5.8 ASFA repeatedly made the point in its evidence¹⁹ that trustees, whether they are elected or nominated by employees or employers, have a duty to act in the best interests of all members of the fund.

5.9 Having regard to the fact that the moneys in superannuation funds belong to the members, the Committee believes that there is a need for an arms' length relationship between the employer and the superannuation fund and that members have a right to participate in the decision making process of the fund.

5.10 Both Mr Noel Davis²⁰ and Mr Jeremy Henderson²¹ in their evidence to the Committee suggested that member representatives can be compromised in their position as trustees because their jobs are important to them. Whilst Mr Davis suggested that the way around this was to have at least one independent trustee, Mr Henderson suggested that nominations should come from the appropriate peak union body and that

¹⁶ Evidence, p 643, 1721.

¹⁷ Evidence, p 37.

¹⁸ Sub No. 78, p 5.

¹⁹ Evidence, p 643, 649, 652.

²⁰ Evidence, p 623.

²¹ Evidence, p 1622.

communication processes were very important so that members were aware of who the trustees were and how they could be contacted.

5.11 With respect to the threshold level at which equal employer/employee representation should apply, the Committee endorses the view put by the ISC²², Jacques Martin²³ and others, that the threshold should be lower than the current level of 200 members. The Committee notes that the recent ALRC report on collective investments²⁴ recommended that equal employer/employee representation apply where funds had 50 or more members. The Committee recognises that the vast majority of funds (87 per cent)²⁵ have fewer than five members and that, under the ALRC proposal, 2 539 funds would be subject to the equal trustee representation requirement.

5.12 However, assuming that all funds with five or more members had arms' length members, implementation of the ALRC recommendation would mean that around 8 700 funds²⁶ would be exempt. In effect, approximately 3.5 times as many funds with arms' length members would be exempt from the equal trustee representation requirement as those that were subject to it. The Committee heard some evidence to suggest that improper and fraudulent practices were more likely to occur in small funds. The circumstances of the Byrwood case (see Figure 5.2) and ABC Engineering (see Chapter 4) bear this out and therefore the Committee favours a threshold lower than the current level of 200 members.

Recommendation 5.1:

The Committee recommends that the requirement for equal employer/employee representation should apply to all funds with arms' length members; that is, funds with five or more members.

5.13 The Committee is conscious that many witnesses expressed concern about the reticence of employees to put themselves forward for nomination as trustees because of the perceived onerous responsibilities. The Committee recognises that in many small, non-unionised workplaces employees may be unwilling to nominate themselves as trustees yet would have difficulty in nominating persons who could represent their interests. As trustee representation is still evolving, the Committee considers it premature at this stage to require all trustee representatives to be elected by the membership and suggests that further consideration be given to means by which employees in non-unionised workplaces can be represented if they do not wish to be trustee themselves. A list of possible nominees maintained by the ISC would be one means of overcoming this difficulty.

²² Sub No 51.

²³ Sub No 90.

²⁴ ALRC, Report No. 59, p 178.

²⁵ Derived from Table 5.2.

²⁶ *ibid.*

5.14 The Committee received representations from one of the employer groups involved in the health care industry about a dispute involving the selection of employer representatives for Health Employees Superannuation Trust Australia Ltd (HESTA)(see Figure 5.1)²⁷. The Committee understands that under current arrangements there is no provision for an independent arbitrator to adjudicate on such issues.

Recommendation 5.2:

The Committee recommends that a list of persons willing to serve as trustees be maintained by the ISC which would be authorised to provide both employee and employer groups with details of the list to assist in the selection of trustees.

The Committee further recommends that in the event that employer or employee groups were unable to agree on a mechanism for selection of their nominees, the ISC be given arbitration powers (provided the matter is not under consideration by the AIRC) and that the ISC's determination be binding on all parties. Where such determinations are made by the ISC, they should operate for a period no longer than three years.

Figure 5.1

Case Study – HESTA

The National Association of Nursing Homes and Private Hospitals is an employer association representing the industrial and political interests of private health care proprietors. Members of the Association are required to make award superannuation contributions on behalf of their employees to the fund.

The rules of the HESTA fund provide that election of employer directors is determined by a ballot of the employer members of the fund. However, employer contributors are not automatically 'members' of the fund. The National Association of Nursing Homes and Private Hospitals alleges that some of the original employer directors have sought to monopolise representation in the trustee structure of HESTA by 'stacking' an annual general meeting to vote out of office a director representing the National Association and that they failed to admit as new members of the fund any nursing home or private hospital employer contributor to HESTA who is a member of the National Association.

An employer representative trustee of HESTA, Mr Wynward, advised the Committee that the rules of HESTA provide that only those organisations of employers or employees that contemplate HESTA in the industrial award structure and which are registered or are recognised by Federal or State industrial tribunals can be eligible to apply for membership of HESTA.

Source: Sub Nos 56, 144, 157, 165.

Independent Trustees and Custodial Trustees

5.15 ASFA in its evidence to the Committee noted that:

The independent trustee is more removed in terms of voting... and perhaps less open to being influenced in the process, if that is a significant risk. But they are also less in touch with the members and the views of members and what is actually happening in the workplace. It needs to be borne in mind that the rules in regard to equal representation also provide for decisions by two thirds of the trustees voting in favour. So, effectively, an independent trustee does not solve a deadlock ...²⁸

Figure 5.2

Case Study – The Byrnwood Case

Byrnwood Pty Ltd traded as Peters Bakeries & Swan Lake Natural Foods, and employed 40-50 employees. Most of the production workers were members of the Federated Miscellaneous Workers Union (FMWU), many of them from non-English speaking backgrounds.

The company ran a defined benefit scheme for employees called the Byrnwood Superannuation Fund. The last actuarial review of the fund was conducted for the 1988/89 financial year. At that stage the fund was healthy, and the actuary recommended in January 1990 that no payments need be made by the employer. In addition, the Award required the employer to pay 3% superannuation into a nominated industry fund.

On 12 November 1990 Coopers & Lybrand advised suppliers, customers and staff that they had been appointed as Receiver Manager to Byrnwood P/L.

On 18 November 1990 the Receiver Manager advised the FMWU at a meeting of his concern with respect to the state of the fund. He appointed three staff to audit the fund.

On 18 December 1990 the Receiver Manager wrote to all employees advising them that the company had not remitted certain superannuation payments including those payable by the company for award superannuation and those deducted from employees' wages.

There was no arms' length relationship between the employer and the superannuation fund. The employer, Byrnwood Pty Ltd, was also the trustee of the Byrnwood Superannuation Fund. The Receiver Manager advised the FMWU that it was only acting in the capacity of employer, and was therefore not in a position to act as trustee of the fund.

However, since the Trust Deed provided for the Principal Employer to appoint and remove trustees, the Receiver Manager indicated that he would give consideration to appointing a nominee of the members as trustee. In view of concerns with respect to the question of the liabilities of the trustees, this invitation was not accepted.

The company had \$6.7 million of secured debts, mainly to ANZ and Standard Chartered Finance. In addition, approximately 90 per cent of the superannuation fund's assets, or \$435,105, had been lent as an unsecured loan to Byrnwood, which the receiver indicated there was no chance of recovering.

The former employees not only lost their jobs but their superannuation benefits. The opportunities for the members to take action against the former trustees of the fund were extremely limited because of the cost and uncertainty of court action. In addition, one of the former directors was a declared bankrupt and another was domiciled in Hong Kong.

The Byrnwood case highlights the need for an arms' length relationship between employer and trustees and the need for the ISC to be able to take action on behalf of members.

Source: Evidence, pp 1608-14.

5.16 Professor Knox told the Committee that he thought any requirement for an independent trustee could:

... be an extra piece of bureaucracy that is unnecessary.²⁹

5.17 The ASC in its evidence argued strongly for a majority of independent trustees because if the law is built around employee or employer controlled trustees, there is always the possibility of Maxwell-type problems.³⁰ The ISC also spoke in favour of independent trustees, arguing that:

... there must be circumstances where trustees, for whatever set of reasons, who are there representing certain interests - and so-called independently - do not always act in an independent fashion.³¹

5.18 TCA said that there are several advantages to a corporate (public) trustee, principally, independence and the fact that such companies have the necessary expertise in investment strategies, taxation and legal issues. Moreover, it was argued that a public trustee has a responsibility to keep abreast of developments and this is not always possible for private trustees.³²

5.19 On the balance of evidence, the Committee believes that a single independent trustee would not break a deadlock and that with the new reporting requirements to operate from 1 July 1992, trustee decisions will be open to far greater scrutiny than is presently the case. Moreover, if the Committee's recommendations in respect of penalties for breaches of legislation are accepted, trustees may be less likely to succumb to particular pressure.

Recommendation 5.3:

The Committee recommends that employer-sponsored and industry funds have no mandatory requirements for independent trustees and that this be left to individual funds. However, to lessen the possibility that trustees could be pressured or coerced by particular interests associated with the fund, the Committee recommends that trustees be provided with legislative protection against action which would unfairly disadvantage them. For member trustees, this would include protection against unfair dismissal and discrimination in career advancement.

Education

5.20 The Committee heard a range of views about whether trustees should be required to have specialist education.

²⁹ Evidence, p 898.

³⁰ Evidence, pp 1307-1308.

³¹ Evidence, p 1850.

³² Evidence, p 262.

5.21 ASFA commented that:

... [trustees] should be ordinary, honest, careful people with a great deal of commonsense. The job is to look after and represent fund members and to balance their conflicting interests. They do not need to be professionals to do this. They may need to seek advice from experts and engage them to perform various services, where appropriate. In many ways they are perhaps parallel to politicians, who do not have to be experts, but they have available to them expert advice.³³

5.22 The joint submission from the accounting bodies noted that a high level of skill and knowledge is required of a superannuation fund trustee. Many trustees are forced to rely on the use of advisers to clarify, explain and administer their funds and the submission argued that if legislation were to prescribe minimum levels of skill and knowledge of company directors, similar action should be taken in relation to superannuation fund trustees.³⁴ The West Australian Minister for Industrial Relations believes that it is necessary to establish an Australia-wide syllabus for training courses for trustees and suggested that the ISC would be a suitable body to establish it.³⁵

5.23 BUS noted in its evidence to the Committee that it supported:

*... the proposal to develop an Australian Institute of Superannuation Trustees Inc to help in promoting excellence and integrity by trustees in the performance of their duties on behalf of members, to assist in developing the knowledge and skills of trustees and to create a forum **which currently does not exist** where trustees of industry funds, corporate funds and public sector funds could share experiences and assist each other.³⁶ [Emphasis added]*

5.24 Since BUS gave its evidence to the Committee, the Australian Institute of Superannuation Trustees Inc has been founded by the Conference of Major Superannuation Funds as an independent non-profit, incorporated association with the following objectives:

- to promote ethical and effective performance standards by trustees;
- to improve the knowledge and skills of trustees, including the administration and management of assets of superannuation funds;
- to develop a code of conduct for trustees; and
- to enhance the sound management and security of superannuation by trustees on behalf of their members.

³³ Evidence, p. 643

³⁴ Sub No. 119.

³⁵ Sub No. 115.

³⁶ Sub No. 7, p 377.

5.25 County NatWest in its submission suggested that the introduction of secondary and tertiary subjects in superannuation will facilitate development of the long-term perspective which is needed if superannuation and retirement incomes policy is to be successful.³⁷ ACM believes that there is an argument for the establishment of formal education courses specialising in superannuation and suggests that responsibility rests with government to provide or subsidise training for trustees.³⁸

5.26 On the question of compulsory education, the Committee notes that many witnesses argued strongly for compulsory, specialist training. Mr Renton in his evidence to the Committee noted that:

... You can have an admirable truck driver, but he does not necessarily have the skills and the resources to make investment-type decisions or superannuation-type decisions... there are plenty of people who could be elected by members of funds and be members' representatives without necessarily being expert in superannuation matters.³⁹

5.27 MMBW suggested that trustee education be obligatory⁴⁰ whilst MTIA suggested that reasonable member representation should be provided subject to the individual trustees being capable of properly exercising their responsibilities. In order to carry out responsibilities, trustees require appropriate knowledge of, and where possible due experience in, the related legal, financial, administrative and investment disciplines.⁴¹ ASFA argued that it was not appropriate to mandate minimum educational qualifications because it cuts across the whole notion of a representative trustee.⁴²

5.28 The Committee believes that the trade union movement, ASFA and other industry groups have made significant progress in educating trustees. The Committee is also of the view that employers are increasingly conscious of the need to allow trustees to be adequately trained and supported.

³⁷ Sub No. 98, p 24.

³⁸ Sub No. 95, p 15.

³⁹ Evidence, p 139.

⁴⁰ Sub No. 66, p 2.

⁴¹ *ibid.*

⁴² Evidence, p 649.

Recommendation 5.4:

The Committee believes that trustee education is essential for the long term viability of the industry and recommends that such education be given high priority by both the Government and the industry. Recognising that the structure of the superannuation industry is still evolving, particularly with respect to trustee representation, the Committee recommends that prescribed courses and training should not apply for the time being.

The Committee further recommends that the ISC should require details of the educational qualifications and/or superannuation-specific training or experience of persons nominated as trustees. If the educational qualifications or superannuation-specific experience of trustees as monitored by the ISC have not shown significant improvement after three years, compulsory education standards should apply. The Committee commends the establishment of the Australian Institute of Superannuation Trustees Inc, and recommends that nationally accredited courses in superannuation be available in all states within five years.

Master Trusts

5.29 Master trust arrangements can be provided by banks, life offices and funds managers. Under OSS Regulation 13(e), certain master trusts may obtain approval from the ISC to be exempt from the equal representation rules. Together with other legislative requirements this means that:

For Banks: The Reserve Bank requires that an independent public trustee must be appointed for any fund managed by a subsidiary of a bank in which investments are available to the public. Failure to do so will require banks to hold capital against those managed funds.

For Life Offices: There are no requirements under OSSA or LIA for public superannuation funds managed by life offices to have an independent public trustee.

For Funds Managers: Public superannuation funds subject to the Corporation Law must have an independent public trustee.

5.30 With respect to life offices, the Committee is concerned about the potential for a conflict of interest to arise where the trustees are also employees of the fund promoter.

5.31 BT stated that private sector public trustees are not suitable or necessary to protect the interests of the unit holders.⁴³ BT commented that:

... trustee companies were really a creature from the last century or some other time which were there to do a particular limited role with respect to

⁴³

Sub No. 105, p 6.

administration of private estates and so forth. With the rapid development of the unit trust industry, they have grown to have this new role which is on a scale many times greater than that old business. In a lot of the cases the trustee companies do not have the capital to actually fulfil the fiduciary role right to the end of the course.

5.32 BT also commented that public trustees do not have the systems to put adequate fiduciary controls or audit controls in place and that they added inefficiency to the system.⁴⁴ AM, in its submission, argued that life offices should be required to have a public trustee.⁴⁵

5.33 National Mutual argued that independent custodial trustees would be introduced at substantial cost.⁴⁶ However, in the absence of a private sector public trustee, it is possible for conflicts of interest to arise as the evidence by National Mutual Ltd (NML) and Mr Foley made clear (see Figure 5.3). It is of concern to the Committee that National Mutual's action appears to be at odds with Regulation 5 of the OSS Regulations which state that:

... a trustee of a superannuation fund must not be a party, or give effect, to the exercise of a lien over prescribed benefits by another person.

Figure 5.3

Case Study – Mr Foley v NML

Mr Foley alleged that NML, acting on the verbal advice of an employer, illegally withheld the accumulated contributions which were due to an employee whose services had been terminated. Apparently, there was an undisclosed sum of money owed by the employee to the employer which was the reason for the instruction to withhold payment. According to Mr Foley, this case highlights the need for an arm's length relationship between the superannuation fund manager and the trustee.

In its evidence to the Committee, NML stated that the trustees applied the lien at the request of the employer. The trustee was National Mutual Superannuation. When queried by the Committee about the discrepancy between the two witnesses, National Mutual responded by noting that:

Mr Foley is asserting that in respect of a lien a document is required. At law that is not so, in my view. A lien is an event, an act, not a document.

(Evidence, p 1904.)

⁴⁴ Evidence, pp 847-848.

⁴⁵ Sub No. 96, p 5.

⁴⁶ Evidence, p 1883.

Recommendation 5.5:

The Committee recommends that all master trust arrangements, including those offered by life offices, be required to have an independent public trustee.

5.34 The other area of concern to the Committee is that master trust arrangements are not required to have member representation. AMP advised the Committee that, as the independent trustee may have a similar role in a number of plans or be involved in other activities, to have directors representative of employers and employees was unlikely to be practicable.⁴⁷ It suggested, however, that similar representation could be achieved by the establishment of a policy committee.

5.35 The policy committee could be structured so that each individual plan – or in the case of multi-employer plans, each sub-plan – could have equal representation in line with current regulations. AMP saw the advantages of a policy committee as being that:

- legal responsibilities could rest with the independent corporate trustee and appropriate sanctions would be available under the corporations power of the Constitution; and
- member nominees are more likely to put themselves forward where responsibilities are advisory rather than legal.⁴⁸

5.36 AMP noted that in respect of personal superannuation plans, there was no need for representation through a committee because the decision to join or leave the fund was solely at the members' discretion. However, the Committee notes in this context that the effect of early termination on policy values may prevent individuals from 'voting with their feet'.

Recommendation 5.6:

The Committee recommends that each individual plan or sub-plan with arms' length members in master trust arrangements be required to have a policy committee comprising equal representatives of employers and employees to advise the trustee.

5.37 Another issue brought to the attention of the Committee was a loophole in OSS Regulation 13(e). This Regulation enables the Commissioner to grant an exemption from the equal employer/employee representation requirement for occupational superannuation funds established after 16 December 1985.

5.38 The AWU claimed in its submission to the Committee that the National Superannuation Fund administered by Federation Life Insurance (now Financial Synergy) and the Australian Farm Superannuation Plan (managed by Australian Eagle) should not

⁴⁷ Sub No. 120, p 35.

⁴⁸ *ibid.*

have been given interim listing by the ISC under Regulation 13(e) of the OSS Regulations⁴⁹. Both these plans are nominated in the Pastoral Industry (Superannuation) Award 1988 and, unlike other industry funds, there is no requirement for equal employer/employee representation because they are sub-plans in a master trust.

5.39 The ISC told the Committee that the grafting of an industry fund onto a master trust arrangement, thereby avoiding the requirement for equal representation, was a loophole in the regulation and that there should be appeal mechanisms available to the various parties if exemption is given under OSS Regulation 13(e).⁵⁰ The Committee notes the ISC submission but believes stronger measures need to be taken which guarantee equal employer/employee representation.

Recommendation 5.7:

The Committee recommends that Regulation 13(e) of the OSS Regulations be amended to require all plans nominated in industrial awards to have equal employer/employee representation.

⁴⁹ Sub No. 181, pp 6-7.

⁵⁰ Supplementary submission to Sub No. 151.