
CHAPTER 10:

STATE SUPERANNUATION SCHEMES

'Because of the construction of the Commonwealth Constitution, there are inherent difficulties in applying some of the ISC's proposed powers to statutory schemes'.⁶⁷

10.1 This chapter analyses the difficulties experienced in applying the SIS legislation to state public sector superannuation schemes and concludes with a recommendation for an amendment.

10.2 The Committee has received submissions from the Cabinet Office of both Queensland and NSW, claiming that the SIS legislation contains a number of provisions which undermine the power of the States to legislate and make policy in regard to their public sector superannuation schemes.⁶⁸

10.3 The focus of the submissions is the seemingly inordinate amount of power that the SIS legislation provides the ISC to regulate state public sector superannuation schemes. The Queensland Government submission, for example, challenged the appropriateness of the ISC (a Commonwealth agency) having the power to suspend or remove a trustee body (appointed under a state law) and appointing a temporary trustee.⁶⁹

10.4 The States submitted that as they already have a high level prudential control and supervision under their own statutes, SIS provided an unnecessary additional layer of regulation.⁷⁰ In this regard the NSW Government Superannuation Office provided information (see Figure 10.1) on the prudential controls applicable to NSW public sector superannuation schemes.

10.5 It was on the above grounds the States submitted that they be exempted from the SIS provisions.

⁶⁷ The Cabinet Office, NSW SIS Sub No 69

⁶⁸ *ibid*
The Cabinet Office, Queensland, SIS Sub No 66

⁶⁹ SIS Sub No 66, p 4

⁷⁰ SIS Sub No 69

Figure 10.1:

PRUDENTIAL CONTROLS OVER NSW PUBLIC SECTOR SUPERANNUATION SCHEMES

- The NSW public sector superannuation schemes are administered in accordance with the Superannuation Administration Act which prescribes such matters as the constitution and functions of the State Authorities Superannuation Board and the State Superannuation and Investment and Management Corporation.
- The schemes are subject to Ministerial control and parliamentary scrutiny. The individual superannuation schemes are governed by their own Acts, which define the rights and obligations of the members, employers and scheme administrators, and prescribe regular actuarial valuations and reporting requirements.
- These Acts include the *Superannuation Act 1916*, the *State Authorities Superannuation Act 1987*, *First State Superannuation Act 1992*, and the *Police Regulation (Superannuation) Act 1906*.
- Government guaranteed employer-financed benefits characterise NSW public sector superannuation.
- The schemes are subject to annual external audits of accounts and records by the NSW Auditor-General under the *Public Finance and Audit Act 1983*, as well as to internal auditing requirements.
- *The Public Authorities (Financial Arrangements) Act 1987* specifies the State Authorities Superannuation Board's investment powers.
- The Annual Reports Act specifies disclosure requirements which must be complied with.
- Other prudential controls imposed by:
 - The Public Sector Management Act 1988* and senior executive contracts.
 - The Freedom of Information Act 1989*
 - The Independent Commission Against Corruption Act 1988*
 - The Ombudsman

Exclusion of public sector schemes

10.6 The Committee was further advised that should the states be granted exemption from the SIS provisions, there would be two unintended consequences:

Firstly, concessional taxation treatment would cease for fund earnings and benefit payments from an exempted, and thus non-complying, superannuation scheme. Secondly, this non-compliant status would mean that employer contributions to exempted superannuation schemes would not be recognised for the purposes of the Superannuation Guarantee Charge (SGC) legislation.⁷¹

10.7 The joint submission recommended that either an amendment to the ITAA (S267) and the SIS Bill (Clause 45) would be needed to ensure the maintenance of concessional taxation treatment of public sector schemes and the deeming of contributions made by employers to these schemes as satisfying the Superannuation Guarantee (Administration) Act 1992 requirements.⁷²

10.8 The Committee is in receipt of a letter from the Prime Minister to State Premiers which proposes that compliance with SIS be automatically required unless an exemption has been granted. Subject to certain conditions the Prime Minister has stated that exemptions would be available. These conditions include undertakings by relevant State/Territory governments:

- to guarantee the liabilities of the scheme by ranking the accrued liabilities of the scheme equally with State/Territory bonds; and
- to ensure compliance with the main operative provisions of the SIS legislation (vesting, preservation, disclosure and, where applicable, prudent investment).⁷³

10.9 The Committee acknowledges the difficulties that the States have with the SIS legislation and agrees that amendments should be made to

⁷¹ Joint submission from NSW, Qld, WA, Tas and NT, Submission No 90.

⁷² *ibid*

⁷³ See Appendix I

accommodate the right of state parliaments to legislate in the area of state public sector employee superannuation. The Committee understands that the states are prepared to adopt parallel prudential controls and supervision which are consistent with the SIS standards.

Recommendation 10.1:

The Committee recommends that the Bill be amended to exempt the States and the Northern Territory. It is further recommended that, if required, the ITAA and the Superannuation Guarantee Charge (Administration) Act be amended to ensure that existing treatment/coverage for certain state superannuation schemes under those Acts is maintained.