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## CHAPTER 12:

# TECHNICAL MATTERS

12.1 This chapter analyses a number of technical matters which the Committee believes should be addressed, namely:

- lack of a definition for market value; and
- equal representation requirements for non-associated employers.

### *Market value definition*

12.2 The Committee considered a submission from the Australian Institute of Valuers and Land Economists (AIVLE) which proposed that a definition of market value be inserted in the SIS legislation.<sup>78</sup>

12.3 The submission indicated that the definition of 'value' under clause 10 of the SIS legislation means 'market value' and includes 'amount'.<sup>79</sup> The SIS legislation, however, contains no definition of market value. The term market value is used in other parts of the legislation, for example, in the in-house asset provisions. The Committee has used the AIVLE definition of 'market value' in formulating recommendation 12.1.

### **Recommendation 12.1:**

The Committee recommends that the Government amend the SIS legislation to insert the following definition of 'market value':

Market Value is the estimated amount for which an asset should exchange on the date of valuation between a willing buyer and a willing seller in an arm's length transaction after proper marketing wherein the parties had each acted knowledgeably, prudentially and without compulsion.

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<sup>78</sup> SIS Sub No 82

<sup>79</sup> SIS Sub No 82, p 1

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**Equal representation requirements for non-associated employers - clause 90**

12.4 The Committee considered a proposal that under clause 90, superannuation funds that have Statutory Accounting Periods (SAPs), which balance prior to 30 December 1993, may have difficulties in meeting the equal representation requirements in non-associated employer-sponsored superannuation funds.<sup>80</sup> The Committee was advised that the funds affected are those which have more than one employer sponsor, and have at least one employer sponsor who is not associated with any of the other employer sponsors.

12.5 The Committee acknowledges that funds in this position will be placed at a disadvantage as they will have to comply with the equal representation rules from as early as 1 January 1994, whereas other funds will have until 1 July 1995 to adopt the equal representation provisions. The Committee understands that the ISC will use its powers to exempt or modify the legislation in respect of these funds. *As it could be construed that such a discretion exceeds the bounds of delegated legislative power, the Committee believes that the ISC should report to the Parliament annually on the nature and frequency of such exemptions or modifications.* (Refer to Recommendation 11.1)

**Key Dates of Commencement**

12.6 The SIS legislation provides that a superannuation fund must make an irrevocable election, pursuant to clause 19, to become a regulated superannuation fund subject to the SIS provisions. Andrew Fairley advised the Committee that practitioners and regulators would have difficulty in meeting the demands of the 1 July 1994 date of election. He proposed that the burden could be eased by having a later date of election for the 'excluded funds' (funds with less than five months).<sup>81</sup>

12.7 The ISC has advised that the Government has addressed these concerns by extending the dates by which superannuation funds must elect to become regulated superannuation funds. Funds whose governing rules are in statute, will have until 30 June 1995 to make an election in accordance

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<sup>80</sup> William M Mercer, SIS Sub No 72

<sup>81</sup> SIS Sub No 91, pp 1-2

with clause 19. Funds with less than five members will have until 31 December 1994 to make an election, whilst funds with more than five members will have until 28 July 1994 to make the election.

**Recommendation 12.2**

The Committee recommends that the Senate agree to a Government amendment extending the dates of elections for superannuation funds to become regulated funds under SIS according to the following schedule:

Type of fund	Last Date of Election
Governed by statute	30 June 1995
Less than five members	31 December 1994, or on the last day of its 1994/95 year of income, whichever comes first
More than five members	28 July 1994