Parliament of the Commonwealth of Australia

Ninth Report of the
Senate Select Committee on Superannuation

Super
Supervision Bills

Occupational Superannuation Standards Amendment Bill 1993
Superannuation (Financial Assistance Funding) Levy Bill 1993
Superannuation Industry (Supervision) Bill 1993
Superannuation Industry (Supervision) Consequential Amendment Bills 1993
Superannuation (Resolution of Complaints) Bill 1993
Superannuation (Rolled-Over Benefits) Levy Bill 1993
Superannuation Supervisory Levy Amendment Bill 1993

Canberra

October 1993

MEMBERS OF THE COMMITTEE:

Senator John Watson	Chair	Tasmania
Senator Sue West	Deputy Chair	New South Wales
Senator Bruce Childs		New South Wales
Senator Chris Evans		Western Australia
Senator Alan Ferguson		South Australia
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LIST OF RECOMMENDATIONS

The Recommendations in this report are either recommendations for amendments to the Bills or recommendations for future government consideration. Accordingly, these have been preceded by either 'Amendment to XXX Bill' or 'For Government Consideration'.

Chapters 1, 2 and 3 do not contain any recommendations.

The Committee recommends that the Bills be agreed to subject to the following amendments:

Recommendation 4.1: Amendment to the Superannuation Industry (Supervision) Bill 1993

Clause 64 - Acquisition of Assets by Funds from Members or Relatives

The Committee recommends that clause 64 be amended to allow certain types of assets to be acquired by a superannuation fund from a member or relative of the member at an arms length price.

These assets are to include only freehold or leasehold property, which reflects true market value, that is used wholly or exclusively in the business of the member or member's relative, plus certain strictly defined marketable securities.

The Committee further recommends that the sole purpose test be strengthened to ensure that any asset or assets included in the exemption provided under clause 64 acquired by the superannuation fund from a member or member's relative does not contravene the sole purpose test.

The Government Members of the Committee - Senators Childs, Evans and West have recommended in a minority report that this amendment not be agreed to.

Recommendation 4.2: Amendment to the Superannuation Industry (Supervision) Bill 1993

Penalty for Breach of Clause 64

The Committee recommends that the penalty for breach of clause 64 be amended to provide a maximum penalty of 200 penalty points (one penalty point equals $100) and/or one years imprisonment.

Recommendation 5.1: For Government Consideration

Public Offer Funds - Transitional Arrangements

The Committee recommends that the Government consider amending the Corporations Law to provide public offer superannuation fund managers with the right to request that the trustee retire on the grounds that it is in the best interests of unit holders.

Recommendation 6.1: Amendment to the Superannuation Industry (Supervision) Bill 1993

Clause 65 Superannuation Fund Borrowings

The Committee recommends that short term borrowing be allowed where it was 'not intended' that the borrowing would be needed, rather than if the need for the borrowing 'was not reasonably foreseeable'. Accordingly, clause 65 should be amended to substitute the words 'not intended' for 'not reasonably foreseeable'.

Recommendation 6.2: For Government Consideration

Duties of Custodian

The Committee recommends that, following the implementation of the SIS legislation, consideration be given to spelling out in regulations the duties of custodians.

Recommendation 6.3: For Government Consideration

Capital Adequacy for Custodians and Fund Managers

The Committee recognises the need for a capital adequacy requirement to establish the substance of custodians and, to a lesser extent, provide a financial buffer in the case of insolvency. The Committee recommends that in drafting regulations the ISC continue to consider a more comprehensive and flexible approach to the capital adequacy requirements for fund managers and custodians.

Recommendation 6.4: Amendment to the Superannuation Industry (Supervision) Bill 1993

Removal of Investment Manager

The Committee recommends that provisions relating to the removal of fund managers consequent to a responsible officer becoming a disqualified person be amended to ensure that there is not an automatic termination of the manager.

The Committee further recommends that in these cases it is the duty of the fund manager to remove the disqualified person from any financial dealings with the fund.

Recommendation 6.5: Amendment to the Superannuation Industry (Supervision) Bill 1993

ISC Discretion regarding Custodians

The Committee recommends that the Government monitor the operation of SIS legislation to ensure that it does not result in any harsh or unintended consequences for custodians who temporarily fail to satisfy eligibility requirements.

Recommendation 6.6: Recommendations for JCCS

'Soft Dollar Commission'

The Committee recommends that the Joint Committee on Corporations and Securities investigate 'soft commissions' as part of its inquiry into institutional investment.

Recommendation 7.1: For Government Consideration

Appointment of Auditors

The Committee recommends that the ISC monitor closely the appointment and termination of auditors in the superannuation industry and, if necessary, advise the Government that legislation be introduced to protect auditors from unjust or unreasonable termination.

Recommendation 7.2: For Government Consideration

Removal of Auditors

The Committee recommends that the ISC continue the practice of notifying the professional accounting bodies where it has cause to believe that an auditor should be removed.

Recommendation 7.3: For Government Consideration

Registration of Auditors

The Committee further recommends that, in accordance with the Committee's first report *Safeguarding Super* (Recommendation 4.11), the Government, in consultation with the professional accounting bodies, again consider establishing a register of superannuation auditors and that the register consist of persons who have completed the training prescribed by the accounting professions.

Recommendation 8.1: For Government Consideration

Referral of Superannuation Powers

The Committee reiterates the recommendation of its first report that the Government explore the possibility of obtaining a referral by the states, either formal or de facto, of their power over superannuation.

Recommendation 8.2: For Government Consideration

Corporate Trustees ISC/ASC Returns

The Committee further recommends that the ISC and ASC implement a system of registration and filing where only a single return is required by corporate trustees of superannuation funds.

Recommendation 9.1: Amendment to the Superannuation Industry (Supervision) Bill 1993

Collection and Use of Tax File Numbers (TFNs)

The Committee recommends that the SIS legislation be amended to allow superannuation funds to collect member TFNs, subject to member consent, from the date the Bill receives Royal Assent. In addition, the Committee recommends that the SIS legislation be amended to allow superannuation funds, to use TFNs for taxation and transfer of benefits purposes.

Recommendation 10.1: Amendment to the Superannuation Industry (Supervision) Bill 1993

Exemption of States from SIS Provisions

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.

Recommendation 11.1: Amendment to the Superannuation Industry (Supervision) Bill 1993

ISC Discretions and Reporting to Parliament

The Committee recommends that having regard to the impact of the SIS legislation on the superannuation industry, the Government amends the SIS legislation to have the temporary powers of modification and exemption for the ISC continued until 1 July 1996. The Committee recommends that during this period the ISC develop definitive guidelines on discretions to replace the existing broad powers.

The Committee further recommends that the ISC report annually to Parliament on the frequency, incidence and nature of the exercise of its discretions.

Recommendation 11.2: For Government Consideration

Unclaimed Money - State and Commonwealth Legislation

The Committee recommends that the Government negotiate with the States and the Northern Territory with a view to agreeing to amendments to the SIS and relevant state legislation to enable Commonwealth legislation on unclaimed superannuation moneys to operate to the exclusion of state law.

Recommendation 11.3: For Government Consideration

Exclusion of Board Members of Trustee Companies

The Committee recommends that the ISC liaise with the ASC with a view to overcoming the exclusion of board members of trustee companies from participating in the company's conduct as trustee of a superannuation fund by the operation of section 232A of the Corporations Law.

Recommendation 12.1: Amendment to the Superannuation Industry (Supervision) Bill 1993

Definition of Market Value

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.

Recommendation 12.2 Amendment to the Superannuation Industry (Supervision) Bill 1993

Dates of Election for Regulated Funds

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

Recommendation 13.1: Superannuation Industry (Supervision) Consequential Amendments Bill 1993

Definition of Value of Property in Bankruptcy

The Committee recommends that the Consequential Amendments Bill be amended to include a definition of 'the value of the property', which outlines a method of valuation and specifies a point in time at which the valuation is to occur.

Recommendation 16.1: Superannuation (Resolution of Complaints) Bill 1993

Jurisdiction of Tribunal to Review Prior Decisions of Trustees

The Committee recommends that the Government regulate to exclude from the Complaints Tribunal those matters involving trustee decisions, made prior to the commencement of the Superannuation (Resolution of Complaints) Act, as to who is entitled to a benefit which has already been paid.

Recommendation 16.2: For Government Consideration

Exclusion of Certain Matters by Regulation

The Committee recommends that the Government not exclude from the Tribunal's jurisdiction, the parts of a complaint involving issues of procedural fairness and the legal interpretation of the terms 'disability' in a deed.

Recommendation 17.1: For Government Consideration

Establishment of Independent Superannuation Consumer Advisory Service

The Committee recommends that the Government consider supporting the establishment of an independent superannuation consumer advisory service by way of grants from Consolidated Revenue over three years. The Committee further recommends that the Government review the funding arrangement with a view to industry assisted funding after the expiry of the three year period.

Recommendation 18.1: Recommendation for Amendment to the Superannuation (Resolution of Complaints) Bill 1993

Standard of Proof for Tribunal Decision

The Committee recommends the Bill be amended to specify that the degree of satisfaction required for the Tribunal to affirm a decision pursuant to clause 37(2) of the Bill is that of reasonable satisfaction, that is, satisfaction on the balance of probabilities.

Recommendation 18.2: For Government Consideration

Notifying Members of Rights of Review of Trustees Decisions

The Committee recommends that the ISC address the issue of notifying members of their right to have an adverse decision of a trustee reviewed by the Superannuation Consumer Complaints Tribunal.