

**ACTU RESPONSE TO THE DRAFT REPORT ON THE
PRODUCTIVITY COMMISSION REVIEW OF THE
SUPERANNUATION INDUSTRY (SUPERVISION) ACT 1993
AND CERTAIN OTHER SUPERANNUATION LEGISLATION**

November 2001

1. The ACTU welcomes the opportunity to make a submission on the draft report.

2. The ACTU is in agreement with the Commission's general conclusion that the degree of regulation imposed through SIS and other legislation is justified in light of the prudential requirements of the industry.

3. The ACTU also agrees that the industry is characterised by a reasonable level of competition, given the number of funds which exist in each of the categories (industry, retail, etc) of superannuation fund.

4. In particular, the ACTU supports the Commission's conclusion that the current system based on trust law for governing superannuation funds, together with the requirement for equal employer and employee representation in governing employer-sponsored funds, is warranted for the continued prudent management of the funds.

5. The draft report makes the point that the equal representation rules may reduce the potential for fraud and malpractice in funds, a conclusion with which the ACTU agrees.

6. As is noted in the draft report, there is a concern held by APRA and others about inappropriate management, particularly in respect of investment, by a number of small employer-sponsored funds. It should be noted that in these cases there was either no employee trustee representation, or the employee representatives were neither member-elected nor union-appointed; that is, they were in effect appointed by the employer or the trustee.

7. The ACTU is concerned that some elements of the public debate about problems with some smaller funds has centred on so-called inadequacies of "amateur trustees". While it is unclear what is meant by "amateur", the clear implication is that superannuation funds would be better-governed by "professional" trustees - presumably persons employed within the industry or who carry out trustee duties as their principal occupation.

8. Typical of this approach has been the remarks of the Financial Services

Minister, Joe Hockey, in releasing the recent APRA issues paper on the safety of superannuation. Although the evidence, including that provided by APRA, points to small funds, all without union involvement, as being vulnerable, the Minister chose to focus on industry funds, and particularly on employee representatives, including union officials.

9. This is remarkable, given the absence of any hint in the APRA paper of inappropriate behaviour by union officials or by employee representatives.

10. The recent Senate Superannuation Committee reports on Prudential Supervision and Consumer Protection for Superannuation, Banking and Financial Services give examples of trustees investing on other than an arms length basis, and in circumstances where questions could be raised about directors' ability to separate their own personal interests from those of the fund members. The draft report refers to the Employees Productivity Award Superannuation Fund, Commercial Nominees of Australia Pty Ltd and the Corrections Corporation Staff Superannuation Fund as examples where the public responses to the apparent losses incurred demonstrate community expectations of a high standard of prudent management and prudential supervision. None of these funds had any union involvement in their trustee..

11. The ACTU submits that the issue of licensing of trustees needs to be seen in the context of ensuring that all trustees have access to sources of independent, skilled and qualified advice. There should not be a requirement for individual trustees or directors of corporate trustees to personally hold specific qualifications, although training should be encouraged as part of the normal responsibility of persons acting in a trustee capacity.

12. The ACTU submits that licensing of corporate trustees could have some merit in ensuring that superannuation funds are operated on a professional and prudential basis. Care needs to be taken, however, that the costs of compliance with a licensing regime are not disproportionate for these bodies, as this could have the effect of disadvantaging members.

13. The ACTU supports, in principle, the draft report's recommendations for simplification of requirements in relation to monitoring age and employment requirements, provisions governing non-resident short-term employees risk management statements and actuarial certificates.

14. The ACTU hopes that these views will be taken into account by the Commission in preparation of the final report.