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9 November 2001

Mr John Cosgrove
Presiding Commissioner
Review of Superannuation Legislation
Productivity Commission
PO Box 80
BELCONNEN ACT 2616

Dear Mr Cosgrove

REVIEW OF SUPERANNUATION LEGISLATION

The Investment & Financial Services Association represents Australia's leading investment managers and life misurance companies. Our members hold more than $630 billion in assets under management on behalf of nine million Australians who have superannuation and managed funds.

The focus of IFSA's comments has been the duplication of regulation and compliance effort in the retail funds management industry. Our first submission provided examples of that duplication, and we outlined further issues in our evidence to the Commission's public hearmig on 16 May 2001.

We have also made some general remarks on the impact of particular aspects of the current Act and Regulations on the cost of operating superannuation funds.

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IFSA

Comments of the Draft report

Older workers

IFSA would strongly support draft recommendation 5. 1, which suggests a review of contribution and cashing requirements for ftmd members aged between 65 and 70 in particular. IFSA has drawn a number of issues to the attention of the regulator and government in this area, noting negative impacts on fund costs (ultimately borne by members) and responsiveness of the system to individual circumstances.

As the Commission notes, particular problems are

- the requirement to cash out benefits at age 65 unless the member continues to work 10 hours per week (and possibly every week), regardless of whether the individual intends to remain in gainful employment, perhaps in some more flexible arrangement than regular weekly hours;
- the corresponding requirement to monitor employment status at very regular intervals, at cost to individual flexibility and fand administration costs; and
- restrictions on contributions after age 65, which are more limiting than would be required by key retirement mcomes policy principles or for protection of tax revenue (many such contributions do not seek tax deductions).

The last two of these issues have been compounded, in IFSA's view, by a particularly restrictive approach on the part of APRA. For example, APRA has argued that the SIS regulation which allows contributions after age 65 (Reg 7.04(2)) could only apply to award and mandated contributions.

Successor Fund Transfers

IFSA supports the thrust of the Commission's draft finding 6.6, that the successor fund provisions are appropriate. IFSA had considerable involvement in the discussion process to produce the current APRA circular on this topic. The considerable issues in interpretation were aired (at length) during this process. The general view taken by IFSA members involved has been that circular is workable enough in practice.

The Commission has expressed a concern that the provisions might be able to be used by an employer seek to avoid obligations. It is open to employers to close a superannuation scheme without using the successor fund provisions, and so it would not be correct to say that the successor fund provisions provide a new avoidance avenue. Consequently, IFSA is unconvinced that further investigation would find wide abuse or avoidance opportunities.

Duplication between Superannuation and Managed Investments Regulation

In our original submission, we pointed out that IFSA member companies must run two concurrent regimes over the same basic investment funds - the Managed Investments Act (MIA) - which forms Chapter 5C of the Corporations Law (CL) - for ordinary retail investments, and the Superannuation Industry (Supervision) Act (SIS) for retail superannuation investments. The concurrent schemes give rise to duplication and inconsistency, examples of which were provided in our first submission and at public hearing on 16 May.

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The draft report acknowledges that this duplication exists, but does not suggest any draft recommendation to ameliorate it. The Commission has indicated it would need 4'clearer identification of the extent of duplication" in order to make any recommendation. As we pointed out in our comments to the 16 May public hearing, IFSA is not aware of data that would allow ready calculation of the cost of duplication. Many activities are undertaken within compliance teams that cover both regimes, and generally costs are not split. To produce disaggregated data would involve considerable effort and cost.

We are aware that the Commission has had discussions with a number of financial services companies to explore these costs, and we commend the Commission for this effort.

We would also note that similar difficulties 'm quantifying duplication cost are encountered between SIS and the Life Act. In their comments to the Commission's public hearmig on 25 October, the Institute of Actuaries also indicated these costs are "difficult to quantify, .[5]

IFSA suggests that lack of data need not prevent the Commission noting the duplication and inconsistency issues as areas requiring further attention. The draft report tends to suggest that analysis of the detail is required before the merits of the principles can be considered. We suggest that it is appropriate that the Commission recommend that the duplication and inconsistency between the schemes be examined and resolved. We provided examples of overlap and inconsistency in our first submission and at the 16 May hearing.

In the draft report, the Commission notes some efforts on the part of ASIC and APRA to reduce the impost of the overlapping schemes. There is clearly scope for this activity to extend further, to identify and resolve inconsistencies in regulations and regulatory policies.

IFSA suggests that, regardless of its views on removal of duplication, the Commission could recommend that the regulatory requirements be harmonised between MIA and SIS. Harmonisation could remove inconsistency in such areas as reporting requirements and compliance activity, within the Commission's terms of reference to "focus on those parts of the legislation that restrict competition, or that impost costs or confer benefits on business."

Licensing requirements

Draft Recommendation 7.1 suggests that superannuation entitles be licensed by APRA. It is not clear whether the Commission is considering recommending additional licence controls on the retail superannuation sector than those already applying under the Approved Trustee provisions. The relevant portion of the draft report refers to employer-sponsored funds, but suggests "an effective licensing arrangement for all superannuation entities (both existing and newly created entities) would help overcome perceived weaknesses".

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IFSA would be concerned if any final recommendation in this area proposed an outcome that would add to the regulation or compliance burden for retail superannuation. Financial services companies offering retail superannuation and managed investments must currently satisfy both the SIS approved trustee requirements and hold an Australian Financial Services Licence (from the implementation of the Financial Sector Reform Act).

There has been effort in the FSR implementation process to reduce unnecsssary regulatory burden, for which IFSA applauds the ASIC. The licence conditions for an AFSL will include appropriate organisational capacity, among other things. The ASIC has indicated that, where an entity is APRA regulated, the entity will generally be regarded as satisfying organisational capacity for an AFSL.

IFSA suggests that, if the Commission intends to make a final recommendation proposing licensing of all superannuation entitles, the recommendation should clarify that any licensing scheme not impose any further burden on retail superannuation funds than does the existing approved trustee system.

Yours sincerely

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