Investment & Financial Services Association Ltd
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Regulation Taskforce
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REDUCING THE REGULATORY BURDEN ON BUSINESS

Thankyou for meeting with IFSA members on Thursday, 10 November 2005 for preliminary discussions on regulatory issues significantly impacting the financial services industry.

IFSA represents the retail and wholesale superannuation, funds management and life insurance industries. IFSA has over 120 members who are responsible for investing over $920 billion, on behalf of more than nine million Australians.

We make the following submission, identifying a broad range of matters that are of concern to our industry, in addition to the copies of IFSA submissions on IFRS and Product Rationalisation that were forwarded to the Taskforce. Our recommendations have been listed in the Executive Summary to the submission with further detail provided in the body of the submission.

Given the technical nature of some of the matters that are subject to a recommendation we have not provided a comprehensive discussion of the issues. Rather we would offer our further assistance if you require a more detailed or technical discussion of the issues identified.

Please do not hesitate to contact either myself or David O'Reilly (02) 9299 3022 if we can be of any further assistance.

Yours sincerely

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RECOMMENDATION SUMMARY

The following recommendations, corresponding to the discussion in the relevant sections of the submission, are made:

1. **General Comment** – That formal arrangements be developed and implemented for consultation and review of policy and regulatory proposals having a broad industry impact.

2. **Licensing** – That a single set of licence requirements apply to entities that are both responsible entities of managed investment schemes and trustees of regulated superannuation entities. In particular, that:

   (a) the *Superannuation Industry (Supervision) Act 1993* (**SIS**) requirements be aligned with the *Corporations Act 2001* and breach reporting to the regulator apply only to "significant" breaches of the law;

   (b) The requirements applying to the appointment and continuing performance of responsible officers be the same under the Corporations Act and SIS;

   (c) content, audit, review and lodgement requirements applying to compliance plans under the Corporations act and to Risk Management Plans under SIS be aligned;

   (d) the exemption powers of APRA under SIS be extended to the licensing requirements of the Act.

3. Regulatory proposals of ASIC and APRA that have the effect of broadly expanding the operation of the law or changing industry structures and operations be required to be subject to a formal review process including a Regulatory Impact Statement. This is consistent with the obligation on ASIC to, in the performance of its functions, strive for reducing business costs (section 1(2)(a) of the *ASIC Act 2001*).

   It is the recommendation of IFSA that the relevant laws be amended to ensure that there are clear obligations on ASIC and APRA to perform their functions and exercise their powers having regard to business costs and economic efficiency.

4. **Product Rationalisation** - The Corporations Act be amended to include a uniform legislative mechanism for financial product rationalisation for the managed investment, superannuation and life insurance products. A simplified regime enabling product rationalisation will result in significant industry and consumer savings as well as addressing the increasing risks associated with legacy products and outdated technology platforms for the administration and delivery of such products.

5. **Register of Beneficial Owners** - Section 672DA(9) of the Corporations Act be amended to extend the 2 day reporting period to 30 days.

6. FSR Refinements -

The law should:

(a) incorporation by reference of extrinsic material into a Product Disclosure Statement (**PDS**) and a Statement of Advice (**SOA**) should be permitted.

(b) expressly provide that where calculators are provided to financial services customers and they comply with an industry standard to ensure inputs and outputs of calculators meet minimum specified requirements, that the output of the calculator is classified as 'general advice'. This will assist consumers to understand and compare financial products and services without that being classed as personal advice.

The relevant provisions of the law should be modified such that providers of calculators:

(i) do not need to hold an AFSL authorising them to provide personal advice; and

(ii) may be exempt from the obligation to have a reasonable basis for the advice and to provide a Statement of Advice, together with other associated obligations.

(c) Life risk insurance should be treated the same as general insurance under the current FSR Refinements Proposals.

7. AML - The Government should develop principles based requirements the prevention of anti-money laundering requirements and the prevention of terrorist financing and that industry should develop guidance on the application of the requirements in conjunction with all relevant stakeholders.

8. Insurance Contracts Act - An amending Bill to provide appropriate remedies applicable to the life insurance industry and accompanying regulations should be completed and passed by Parliament as soon as possible.

9. HREOC - The Government act on its recommendation of 27 January 2005 for the development industry codes and guidelines to assist with the operation of the *Disability Discrimination Act 1992*.

10. Managed Investment Tax Review – The Government should review the application of the Income Tax Assessment Act to the managed investment industry and develop a simplified and self-contained taxation system for managed investment products. The reforms should be revenue neutral.

11. Regulation of IDPS – The status of Investor Directed Portfolio Services (IDPS) as financial services under the Corporations Act should be specifically acknowledged. Such services are currently regulated under ASIC Class Order relief that had its origin in a pre Financial Services reform legislative environment.

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12. Accounting Standards

(a) General – Proposed accounting standards must be subjected to thorough analysis, consultation, consideration and review by the AASB with industry before any recommendation is made to the Parliament.

(b) AASB 1046 – Director and Executive Disclosures by Disclosing Entities - Section 285 of the Corporations Act should be amended to make clear that the disclosure of executive remuneration in the financial accounts of disclosing entities that are managed investment schemes is limited to remuneration directly incurred by the scheme.

13. Technology – All legislation should be technology friendly and encourage the development and adoption of technology solutions. Technology solutions particularly in relation to the distribution of mandatory reports and communications to customers will result in substantial cost savings to industry.

The relevant laws should be amended to enable a fund responsible entity or trustee to send communications to a member electronically (and via web-link) where the fund responsible entity or trustee has the electronic address of the member. Where a member does not have an electronic address, the member should have the option to be able to access communication via the fund website.

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FINANCIAL SECTOR REGULATION – REDUCING THE REGULATORY BURDEN

General Comment

Volume, complexity, inconsistency and impracticality in legal and regulatory requirements create one of the greatest challenges to business and impediments to business operations today. For the financial services industry, the sources of those regulatory requirements are:

- primary legislation – Acts of the Parliament;
- secondary legislation – regulations subject to disallowance by Parliament;
- statutory instruments – ASIC class orders and APRA prudential standards also subject to disallowance;
- policy statements, practice notes and guidance notes issued by the regulators;
- International standards – adoption of International Financial Reporting Standards by Australia.

Increasingly, expediency appears to the determinant of whether a particular requirement appears in an Act or regulation or class order, a prudential standard, a policy statement, a practice note or guidance note. A recent example of such a proposal is the deemed inclusion in the Corporations Act 2001, by regulation, of new section 1017I[1]. Indeed, even in legislation there are examples of significant changes being made to the law without due consideration to the practical impact of proposed requirements[2].

Under the current laws, there is greater complexity and has been a broadening of discretion exercised by regulators. There is, in industry's view, a need under the current regulatory arrangements for the regulators to be subject to greater levels of accountability. We recommend that formal arrangements be developed and implemented for consultation and review of policy and regulatory proposals having a broad industry impact.

Legal compliance is a significant operational undertaking by operators in the financial services industry. The volume and scope of legislation/regulation has created a compliance driven culture that is creating a risk averse business environment and dampening entrepreneurship. Additionally, the apparent perception of Government officials and regulators that industry has the resources and can implement changes "overnight" at minimal cost is also a particular concern.

It should be noted that the legal validity of a particular requirement will usually only be tested in the courts in extreme circumstances. Litigation concerning an interpretative issue is a last resort and a costly alternative to proper consultation.

The following is a list of specific matters that represent current significant regulatory issues. The list is not exhaustive and does not indicate any order of importance. The matters raised do highlight the nature of the issues and problems faced by industry.

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(1) Regulatory overlap;

(2) Section 601GA of the Corporations Act 2001

(3) APRA draft Circular on Investment Management and Investment Choice;

(4) Product Rationalisation;

(5) Beneficial Owner Register;

(6) FSR Refinements – shorter PDS Regime, on-line calculators, simplification of the advice regime under FSR;

(7) AML;

(8) Insurance Contracts Act;

(9) HREOC;

(10) Managed Investments Tax Review;

(11) Regulation of IDPS;

(12) Accounting standards;

(13) Use of Technology.

1. REGULATORY OVERLAP

In implementing the principles underpinning the recommendations of the Financial System Inquiry (Wallis Committee) the Government sought to restructure industry regulation on a functional basis. The *Financial Services Reform Act 2001* (**FSRA**) and associated changes was the Government response to the Wallis recommendations.

In essence, the Wallis Inquiry found that financial system regulation was piecemeal and varied, and was determined according to the particular industry and the product being provided. This was seen as inefficient, as giving rise to opportunities for regulatory arbitrage, and in some cases leading to regulatory overlap and confusion.[3]

Since the enactment of FSRA there is a concern, particularly for institutions that are financial conglomerates, that APRA is straying from the Wallis principals and seeking to regulate in areas properly the responsibility of ASIC, but in the name of prudential regulation.

It was expected that in areas where there were overlapping or abutting requirements that APRA and ASIC would work closely together with a view to avoiding or minimising inconsistency. We understood that the regulators had established a bilateral co-ordinating committee for this purpose, and had entered into a Memorandum of Understanding to cover matters such as information-sharing and co-operation in policy-making and problem-solving. There is little evidence of this in the areas of licensing or corporate governance. Two areas where there is a particular need

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for review and justification for differing regulatory requirements. That justification should be made on a cost benefit basis and communicated jointly by both regulators.

1.1 Licensing

IFSA considers that the framework for the new trustee licensing and superannuation entity registration regimes to be sound but we maintain our position that unless there is good reason for differentiation, the licensing requirements for the trustee of a superannuation fund and those of the responsible entity of a managed investment should be consistent.

Superannuation and non-superannuation managed investment laws have similar objectives. Consistency of regulatory requirements and administration will help to lower risk and reduce implementation costs for the industry. It is important that the potential for regulatory duplication and overlap be avoided. The same standards for trustees should be applied regardless of whether it is a superannuation investment or any other type of trustee activity.

Any proposition that trustee duties under the superannuation and managed investment regimes are in some way different must be dismissed. As stated at paragraph 3.9 of the Explanatory Memorandum to the Bill, “Superannuation is essentially a managed investment with special characteristics including compulsion, preservation rules that restrict access until retirement, taxation advantages and limited choice and portability”.

IFSA is mindful of the need to guard against overlapping and duplicative legislative requirements resulting in confusion and additional costs to industry and members. APRA and ASIC should work in a complementary fashion given their different mandates. To do otherwise would undermine the significant structural legislative achievements resulting from the implementation of Wallis Inquiry recommendations.

A number of IFSA members operate diverse businesses, providing investment, superannuation and retirement products to individuals, corporate and superannuation investors. To operate these businesses, they are required to comply with a large number of regulations and conditions in their capacity as a Responsible Entity of managed investment schemes and Trustee of superannuation funds.

As a Responsible Entity and Trustee respectively, they are required to hold an Australian Financial Services Licence (**AFSL**) from ASIC and a Registrable Superannuation Entity (**RSE**) Licence from APRA. The differences in the respective licensing requirements give rise to a number of areas of compliance which should be more consistent if operational efficiencies and manageability are to be achieved. Particular differences raised by IFSA in the context of superannuation licensing that have not been addressed include breach reporting, responsible officer requirements, and risk management statements.

(a) Breach Reporting

Breach reporting is a requirement under both the SIS RSE licensing and Australian Financial Services Licensing requirements of the Corporations Act. Industry has repeatedly sought consistency in like requirements under both the superannuation and corporations laws. Breach reporting is one such area.

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Section 29JA of SIS requires a RSE licensee to report any breach of its licence conditions, its Risk Management Strategy and Risk Management Plans and certain regulatory provisions. The provision does not include any concept of "significance" or "materiality" and is, therefore, not consistent with the breach reporting requirements imposed on an AFSL holder who may also be an applicant for or holder of an RSE licence. An AFSL holder is required to report "significant" breaches of SIS (see regulation 7.6.02A of the Corporations Regulations) to ASIC under section 912D of the Corporations Act and all breaches under 29JA of the SIS.

Apart from this inconsistency, the obligation to report all breaches no matter how insignificant is onerous and will be an administrative nightmare for both the RSE Licensee and APRA without producing any commensurate benefits. Audit requirements under both the superannuation and corporation laws are intended to provide a check on compliance with the law for the purpose of ensuring operational integrity. History has shown that a structural approach to regulation incorporating a series of checks and balances with proper allocation of responsibility is the most effective form of regulation. It is the strong view of IFSA members that breach reporting should be limited under SIS to "significant" breaches as is the case under the Corporations Act.

What is a "significant" breach? Guidance on the meaning of "significant" is provided in section 912D(1)(b) Corporations Act which specifies factors relevant to a determination of "significance". Additionally, ASIC published guidance in October 2004 in the publication entitled 'Breach reporting by AFS licensees - An ASIC guide' (**Guide**). In the Guide, ASIC sets out how section 912D operates and what it expects of AFSL holders.

Key points in the Guide include ASIC's views that:

- any breach or likely breach that causes actual or potential financial loss to clients is likely to be significant unless the breach is isolated, the amount of the loss involved is minimal and immaterial, **and** the breach affects a very small number of clients (for example, a unit pricing error may be significant even if it causes a very small loss if it affects a large number of clients);

- when considering whether a breach (or a likely breach) is significant, one factor that must be considered is the extent to which the breach or likely breach indicates that compliance arrangements are inadequate, that is, even a minor breach may be significant if it has not been detected for some time as it might indicate that compliance arrangements are inadequate;

- the licensee should have 'well-understood and documented' processes in place to identify breaches or likely breaches, decide whether they need to be reported, rectify them and ensure that arrangements are in place to prevent their recurrence;

- even though such a register is not expressly required by the Corporations Act, licensees should maintain a 'breach register' including information such as how breaches were identified and why it was considered that they were or were not 'significant';

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- the information to be provided in a section 912D report includes, where applicable, the section of the law breached and the reasons why the breach is considered 'significant';
- the period for reporting should be adhered to regardless of whether, for example, all avenues of investigation as to whether the breach is substantial are complete, the Board has been briefed or the breach has been considered by internal or external legal advisers; and
- for the purposes of section 912D, ASIC will consider that a licensee has become 'aware' of a breach (or a likely breach) 'when a person responsible for compliance becomes aware of the breach'.

It is IFSA's recommendation that the same approach to breach reporting should be adopted under the SIS requirements. The alignment of breach reporting requirements would assist industry in complying with its obligations under both SIS and the Corporations Act.

(b) Responsible Officers

The definition of "responsible officer" at section 9 of the Corporations Act, in relation to a body corporate that applies for the AFSL, means "an officer of the body who would perform duties in connection with the holding of the licence". In comparison, SIS defines under section 10 a "responsible officer" in relation to a body corporate, to mean: (a) a director of the body; or (b) a secretary of the body; or (c) an executive officer of the body.

As a result of the misaligned definitions, it is not uncommon have a different set of responsible officers (with some common responsible officers) for each of the AFSL and RSE licences.

The requirements relating to the appointment and ongoing review of the responsible officers also vary between the regulations. For the AFSL, the responsible entity must ensure that the responsible officer is of good fame and character and meets knowledge and skills requirements of ASIC Policy Statement 164. APRA, on the other hand, requires responsible officers to meet the Fit and Proper Operating Standard under SIS. Although the Fit and Proper Operating Standard is similar to the AFSL requirements, it is sufficiently different to require another analysis to be conducted of the responsible officers who are already a responsible officer under AFSL.

In addition, police checks that were obtained as part of the AFSL process could not be used for the APRA RSE Licence application process. Given that officers of a responsible entity and a trustee both exercise trustee duties, it is difficult to understand a need for the different threshold tests of the two regulators. A common definition of 'responsible officer' and an integrated standard on the level of fitness and propriety that responsible officers should meet on appointment and on an ongoing basis would be consistent with Wallis principles. The approach adopted merely prolongs the piecemeal approach that Wallis criticised.

(c) Risk Management

The Risk Management Strategy (**RMS**) and the Risk Management Plan (**RMP**) of a SIS trustee are required to be reviewed internally at least annually. In addition, an

approved auditor must audit the RMS and RMP annually and attest that the framework adopted by the trustee to identify, assess, control, report and review the risks of the company and its products has been implemented and is operating effectively.

Managed investment scheme responsible entities are also required to produce compliance plans for each of their managed investment schemes registered with ASIC. These compliance plans cover many of the same matters contained in the RMP of superannuation funds, however, a different range of content, audit, review and lodgment requirements apply to the compliance plans. The result is that there are different legal requirements governing similar operational issues with additional cost for minimal if any discernible benefit.

(d) APRA's exemptive powers

Under sections 328 and 332 of SIS, APRA is able to provide exemption or modification relief for individual persons or classes of persons from the requirements of SIS but only in respect of "modifiable provisions". The term "modifiable provision" is defined in section 327 of SIS but does not extend to the requirements of **PART 2A - LICENSING OF TRUSTEES AND GROUPS OF INDIVIDUAL TRUSTEES**.

In the transition to the licensing of superannuation providers, issues will continue to be identified which, in the absence of amendment to the relevant laws, will result in legal and operational uncertainty. The provision of a modification power to provide relief from statutory requirements is considered an effective mechanism for ensuring that the administration of the law is appropriate in all circumstances.

IFSA recommends that Government review APRA powers under SIS and consider extending the exemption powers of APRA to the licensing requirements of the Act.

1.2 Corporate Governance

When APRA released its draft Corporate Governance Standard in November 2003 as part of general insurance reforms, IFSA in conjunction with other industry bodies submitted that corporate governance should remain the domain of ASIC and ASX rather than APRA. In addition, industry argued APRA should adopt the flexible "if not, why not" principle in alignment with ASIC and ASX if it proceeded with its own standard.

Industry believes that the provisions in the fit and proper standard do not recognise other provisions for fitness and propriety that already exist under ASIC requirements, and internationally. For example, the wording of APRA's proposed definition of 'senior manager' differs from ASIC's; similarly, there is a difference in what information the regulators require concerning assessable individuals.

These differences appear unnecessary. Using ASIC's existing wording would ease the administrative burden as institutions should already be compliant with them. There is also scope to align APRA's whistle blowing provisions with the Corporations Law.

Most significant, however, is that neither the standard nor guidance note provides a process for ensuring procedural fairness in the event that a responsible person is deemed by APRA as not fit and proper. This issue is heightened because disqualification under APRA's standard appears to be for life.

2. SECTION 601GA OF THE CORPORATIONS ACT

Section 601GA prescribes the contents of managed investment scheme constitutions for the purposes of registration under the Corporations Act 2001. Section 601GA is an example of ASIC adopting an interpretation of a provision in the Act that is not consistent with either the original intent of the Managed Investment Scheme provisions or their operation since 1 July 1998.

The relevant requirements are sections 601GA(1)(a) and 601GA(4), referred to as transaction cost allowance provisions, provide:

> *(1) The constitution of a registered scheme must make* ***adequate*** *provision for:*
>
> > *(a) the consideration to be paid to acquire an interest in the scheme……………………………………………………;*
>
> and,
>
> *(4) If members are to have a right to withdraw from the scheme, the scheme's constitution must:*
>
> > *(a)* ***specify*** *the right …………………………………………….*

(Emphasis added)

In April 2004, ASIC advised IFSA that it had received a number of applications from law firms acting on behalf of responsible entities requesting registration of their newly conceived funds. ASIC had formed the view that the constitutions of many of those funds did not comply with the relevant requirements of the Corporations Act 2001 and ASIC Policy Statement 134.19 and 134.25.

The action by ASIC caused significant disruption and uncertainty, forcing many issuers to put on hold plans for new products. That disruption occurred as a direct result of the procedures adopted by ASIC in implementing it's 'revised' administration of section 601GA (under PS 134), without prior warning or consultation with industry. It was made clear at the time that ASIC's action had not stemmed from any concern about actual conduct on the part of the industry in regard to transaction costs.

The news that ASIC had changed its view as to what constitutes compliance with section 601GA came as a complete surprise to industry. The transaction cost allowance clauses employed by IFSA member companies had been in use for many years and complied with IFSA industry standards. ASIC's actions represented a significant policy change.

Post 28 April 2004, IFSA members have had a number of meetings with ASIC concerning their interpretation of section 601GA. On 2 December 2004, IFSA provided to ASIC a joint opinion of 9 Sydney legal firms operating in this area concluding that "the drafting of section 601GA does not support ASIC's interpretation" of the law.

The issue is still unresolved as at 22 November 2005, although as a compromise position proposed by ASIC is currently being reviewed. In its current form the ASIC relief would result in IFSA members incurring significant additional costs to industry without any significant benefit to members. Those costs would involve implementing

a new compliance and reporting regime without any demonstrable benefit to customers.

It is noted under section 1(2) of the ASIC Act that ASIC must "strive" to "maintain, facilitate and improve the performance of the financial system and the entities within that system, in the interests of commercial certainty, reducing business costs and the efficiency and development of the economy". However, it appears to industry that this obligation is not drafted with sufficient clarity, and it is the recommendation of IFSA that the law be amended to ensure that there is a clear explicit obligation on ASIC, in the exercise of its functions and powers, to have regard to business costs and economic efficiency.

IFSA's experience in this matter further also reinforces, in its view, the need for extensive consultation prior to any proposed changes to regulatory policy or amendments to the law and industry practice.

3. APRA DRAFT CIRCULAR ON INVESTMENT MANAGEMENT AND INVESTMENT CHOICE

Based on the introduction of choice of fund, APRA has re-drafted its circular on superannuation trustee responsibilities concerning the management of investments and investment choice. If implemented, the APRA circular will require trustees to ensure that individual members hold a diversified portfolio of assets. In practical terms, trustees will be required to monitor individual investment strategies and limit the opportunity to invest in single sector investments and direct shares.

Generally, trustees currently do not monitor the specific investment choices made by individual members. The new draft circular is at odds with industry understanding and interpretation of the Superannuation Industry (Supervision) Act 1993 (SIS) relating to member investment choice, as well as longstanding industry practice. It will also mean public offer funds are placed at a further competitive disadvantage to DIY superannuation funds, which are not regulated by ASIC and will not be required to comply with the APRA circular.

Since the SIS Act was introduced in 1993, the superannuation industry has changed significantly with more and more retirement savings now being invested through public offer superannuation funds, which offer a significant amount of investment choice. SIS was originally designed with stand-alone corporate funds, public sector and industry funds in mind where investment choice was limited mainly to diversified (balanced investment) options.

APRA suggests that s52 of the SIS Act means that trustees should have regard to individual investment strategies, and therefore, monitor and limit exposure to undiversified investments. The industry on the other hand, believes that this view is inconsistent with industry practice adopted since the enactment of the SIS Act, and has legal advice that APRA's interpretation of the law in not correct. Whatever the proper legal view, arguably some aspects of the SIS Act are outdated and have not kept pace with the industry developments or market practices over the last 15 years. To our knowledge there has not been a major problem with the way industry has developed.

With the introduction of choice of fund, APRA's interpretation of the law will place very unreasonable burdens on trustees to monitor individual members' investment strategies. This is contrary to the principles underlying choice, which provide that individual consumers have the right to determine what is in their best interests and how their retirement savings should be invested. If APRA's view prevails funds will face increased cost structures (caused by the need to monitor investments on a regular basis for each and every fund member), and it is highly likely that individuals will increasingly seek to use the DIY option to avoid investment restrictions.

Industry and APRA are still in negotiations over this issue.

It is noted under section 8(2) of the Australian Prudential Regulation Authority Act that APRA In performing and exercising its functions and powers, "is to balance the objectives of financial safety and efficiency, competition, contestability and competitive neutrality". Like ASIC, APRA should have regard to the cost on industry in developing what are for all practical purposes defacto legislative requirements. It is the recommendation of IFSA that the law be amended to ensure that there is a clear explicit obligation on APRA, in the exercise of its functions and powers, to have regard to potential business costs and economic efficiency.

4. PRODUCT RATIONALISATION

Australia has a well established financial services industry with a long history of product innovation. A benefit of this is the availability to investors of a large range of financial products that have been developed to meet market changes and changing lifestyle, taxation and consumer priorities.

The financial services industry in Australia has, particularly since the early 1980s, been the subject to significant legislative reforms and technological changes in both administration and delivery of investment services to clients. A legacy of this long history of legislative change, industry innovation and merger and acquisitions is an increase in the number of financial products that are closed to new investors and that operate on old computer systems which are increasingly difficult to support.

Increased convergence in the financial services sector has also resulted in companies acquiring a range of smaller businesses or product lines. The negative aspect of such convergence is that fund operators can be left with a diverse range of products many of which are dependent on outdated systems, and that legislative requirements are out of step and overlapping resulting in particular product offerings losing their relevance in a dynamic industry.

While the superannuation and life insurance regimes do contain mechanisms enabling product rationalisation, the respective regimes[4] tend to involve lengthy and costly processes that in fact inhibit product rationalisation.

While the Financial Services Reform legislation was designed to better protect investors and equip the Australian financial services industry compete in the 21st century, it is now an appropriate time to continue those reforms and to introduce a single legislative mechanism to enable financial product providers to rationalise their

operations to more efficiently meet the needs of investors. It is highly desirable that the law be amended to introduce a legislative neutral mechanism to allow financial product rationalisation.

Reform in this area would be a continuation of Government policy to modernise Australian financial laws. Such a reform would build on the recent financial services reforms and will enable operators in the financial services industry more efficiently utilise their resources to better service their clients.

An industry submission proposing a uniform legislative mechanism for financial product rationalisation in the managed investment, superannuation and life insurance industries was lodged with Government on 27 July 2005. A simplified regime enabling product rationalisation will result in significant industry and consumer savings as well as addressing the increasing risks associated with legacy products and outdated technology platforms for the administration and delivery of such products.

IFSA recommends that the Corporations Act be amended to include a simplified process for the rationalisation of legacy and sub-scale financial products. Those provisions would apply to managed investments, superannuation and life insurance products. A copy of the IFSA submission to Government has been separately provided to the Regulation Taskforce.

5. BENEFICIAL OWNER REGISTER

Following recommendations by the Parliamentary Joint Committee on Corporations and Financial Services, the Government introduced into the CLERP 9 legislation a requirement for listed entities to keep a register of information they hold identifying its beneficial owners and updating that register within 2 days of receipt of such information. New section 672DA applied from 1 January 2005.

Certain concerns were raised with Government on 11 November 2004 about the operation of the new provision, particularly the 2 day reporting requirement. The primary concern is that institutional investors would find that their buying and selling activity could effectively become public knowledge within a week of their actual buying and selling. Additionally, that a share trading methodology is likely to develop around both institutional and retail investors “piggy-backing” on the buying and selling activities of others e.g. following the activities of high performing funds.

The IFSA submission to Government sought an extension of the 2 day reporting period to 30 days. In finalising our recommendations to Government, IFSA had consulted with a number of organisations including the ASX. We have since reapproached those organisations, and sought advice from our associated organisation in the US and UK on the practice and possible reaction to the imposition of a 2 day reporting requirement in their jurisdictions. The international comparison is important given that it was one of the reasons for the recommended amendments by the Parliamentary Joint Committee on Corporations and Financial Services.

All organisations approached supported the IFSA position. In particular, the IFSA proposal is supported by the ASX as market regulator, the Australasian Investor Relations Association representing listed entities on corporate disclosure issues, and IFSA member companies managing over $920 billion of assets.

Rather than bring Australia into line with international best practice the new requirement will serve to encourage various forms of market manipulation including 'front running'. Even at 30 days our new requirement would be much tougher than the US (13F Reports) or the UK requirements.

While the US requirements are for portfolio reporting by institutional fund managers and investment companies, the same issues apply in the context of disclosure of Australian fund managers holdings in a listed entity (company or trust) by the operation of under section 672DA. We note, in particular, the following statement in an ICI Comment Letter on the US provisions:

> Technological advances since the enactment of Section 13(f) have greatly increased the speed and ease with which the information in 13F reports may be accessed and disseminated, thereby making it possible to package the information in ways that facilitate predatory trading practices. Indeed, commercial services (such as those referred to above) that offer the ability to trade securities on the basis of information regarding the holdings of mutual funds appear to rely in significant part on information from 13F reports.

Our industry considers this matter an urgent issue requiring rectification. While the matter was first raised with Government in November 2004 no decision or proposed action has yet been communicated to industry. It should be noted that front running or other predatory trading practices are not going to be broadly publicised or readily detectable. The current legislative provisions facilitate such practices and will bring into question the integrity of our financial markets.

IFSA recommends that section 672DA(9) of the Corporations Act be amended to extend the 2 day reporting period to 30 days.

6. FSR REFINEMENTS – SHORTER PDS REGIME, SIMPLIFICATION OF THE ADVICE REGIME UNDER FSR, ON-LINE CALCULATORS

6.1 Shorter PDS - The length of current Product Disclosure Statements has been identified by both industry and regulators as undesirable. It should be noted that industry has responded to the requirements of the law within the context of a specific legal requirement that disclosure be "clear, concise and effective"[5]. Clearly, in terms of the length of PDSs, there is a disconnect between the expectations of Government on the basis of the existing requirements and that of industry in meeting its legal obligations under those same legal requirements.

The recent FSR Refinements Exposure Draft Regulations is an attempt by Government to address this problem and facilitate the development of shorter disclosure documents. The Refinements Proposals foreshadow a short form PDS regime that will result in the issue of two disclosure documents concerning the same offering – a long form document and a short form document.

While any move toward shorter PDSs for consumers is encouraging to IFSA and our members, we believe there remains significant work and refinements to be undertaken. Whereas the proposed short form PDS, being a summarised version of the standard PDS, is *optional*, the standard PDS remains mandatory.

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Problems with the proposed short form PDS regime:

(a) Product issuers will incur substantial additional implementation and compliance costs in producing two disclosure documents for a single product. IFSA believe that writing, reviewing and due diligence costs will be incurred in producing both the 'short form' and standard PDS. In the majority of cases, it is likely that changes to the standard PDS will trigger changes to the shortform PDS and vice versa.

(b) The new Short Form PDS provisions give issuers the ability to summarise information contained within the standard PDS but excludes information relating to fees disclosure, which must be set out in full. This requirement will limit the ability of issuers to produce truly short form PDSs.

IFSA has already submitted to Treasury that we hope to work in partnership with Treasury and ASIC for a workable solution. It is, however, our firm view that a ***single*** PDS regime delivering shorter and more consumer friendly disclosure documents should be the ultimate aim of any reform process seeking to give effect to better and more simple outcomes for both industry and consumers.

Significant efficiencies can be gained if legislation/regulation facilitates having single shorter more effective PDSs for consumers. Such a proposal would avoid the compliance cost and duplication of two documents that contain similar information. A shorter document is possible where incorporation by reference is permitted. It should be noted that prior to the commencement of the FSRA, that incorporation by reference was permitted in managed fund prospectuses and continues to be available for short form prospectuses (section 712) but not product disclosure statements.

IFSA recommends that:

(a) more succinct short form PDSs can be achieved if a summary of information required under the "Additional explanation of fees and costs" requirements of the fee disclosure regulations may be permitted.

(b) incorporation by reference of extrinsic material into a PDS should be adopted.

IFSA considers that the PDS regime foreshadowed in the current refinements draft regulations should evolve quickly to a single shorter form PDS, and we believe that incorporation by reference may be essential. IFSA have made extensive submissions following both the refinements proposals and the subsequent draft regulations, and intend to make a further submission to Treasury outlining our recommendations.

6.2 Advice - IFSA has expressed support for the initial FSR proposal that advisers are not obliged to include in an SoA information on alternative products or strategies, but is frustrated by the draft refinements regulations which is seeking to introduce a new / additional legal requirement for advisers to now compare alternative products or strategies, thus adding to compliance burden when the refinements should be doing the opposite. IFSA has requested for the removal of the new proposed regulations 7.7.10AA and 7.7.10AB for this reason.

IFSA has been advised that the proposed new requirement has been removed.

6.3 Incorporation by Reference in SoA - An aspect of IFSA's submission following the initial refinements proposal in May that is not addressed in the current

round of refinements draft regulations is the issue of incorporation by reference into SoAs.

Collectively supported by the FPA, NIBA and IFSA, relief was requested in a letter by the FPA on 31 March 2005 from ASIC to facilitate what we consider to be very effective means by which shorter SoAs could be achieved. IFSA had indicated support for the FPA's relief application, but now seek that practical improvements to the regulation should be made to provide the ability to incorporate by reference into an SoA the following:

(a) information contained in a pre-FSR financial plan or other 'eligible advice document' previously provided to the client as part of the record of advice.

(b) relevant information in prior SoAs in those cases where a new SoA is prepared in respect of further advice rather than an SoAA.

(c) certain extrinsic material given to the client for an SoA relating to an initial advice.

(d) other relevant documents like research reports, industry developed 'guide', provided to clients, eg. glossary of terms, worked dollar examples and standardised disclosures, referring agent's disclosure of referral fees, client service contracts, client instructions to financial adviser, etc.

6.3 Online Calculators - IFSA supports the FSR Refinements Proposal that sought to promote the provision of basic online calculators to enable consumers to understand and compare financial products and services without that being classed as personal advice.

IFSA appreciates ASIC's efforts to facilitate the provision of calculators to consumers, we refer to ASIC's recent consultation paper relating to Online Calculators. In our view, however, the proposed relief in the ASIC paper is not sufficient to foster the development and use of quality calculators.

In light of the above, we recommend that the relevant provisions of the law be modified such that providers of calculators:

(a) do not need to hold an AFSL authorising them to provide personal advice; and

(b) may be exempt from the obligation to have a reasonable basis for the advice and to provide a Statement of Advice, together with other associated obligations.

IFSA is supportive of ASIC's proposal for an industry standard to apply to all calculators to ensure inputs and outputs of calculators may meet minimum industry standards and assist in educating consumers. An IFSA working group has already been established to consider such a standard. IFSA also recommend some conditions that providers of calculators should be subjected to in order to secure an appropriate level of consumer protection under the law.

6.4 Life Insurance - IFSA is very concerned about the level of underinsurance in the Australian community. This applies to life insurance as much if not more than it applies to general insurance. Recent studies by IFSA members have demonstrated that

the level of life underinsurance in Australia is over $1.3 trillion. This is a serious community and public policy issue both in terms of the impact for Australian families and on the public purse. Australian families can find themselves in serious difficulties on the death or injury of a family member whether they are one of the breadwinners or whether they are a carer or dependent. In each case, the consequences for families in terms of loss or diversion of income and additional caring and household expenses are significant. This in turn increases the demand for public services and benefits.

It is, therefore, imperative that the regulatory regime for life risk insurance facilitates the availability of advice and products for Australians. IFSA considers that many of the current refinements proposed by the Government in relation to general insurance should also apply to life risk insurance where they reduce compliance costs and unnecessary impediments on making life risk insurance available.

The current refinements proposals for general insurance create an uneven playing field in relation to competing products and do not deal with life and general insurance products, such as consumer credit insurance, appropriately.

IFSA recommends that the proposed Product Disclosure Document (**PDS**) (regulations 7.9.15D and 7.9.15F) and Statement of Advice (**SoA**) (regulation 7.7.10(d)) included in the FSR Refinements Proposals should be extended to life risk insurance products. Details of the specific amendments required have been provided to Treasury in the IFSA submission dated 8 November 2005.

6.5 Sickness and accident insurance - IFSA is particularly concerned that the Government's current proposal create an unequal playing field for disability products issued by life companies which directly compete with sickness and accident policies issued by general insurance companies.

The main difference between disability insurance provided by life companies and sickness and accident insurance provided by general insurance companies is that disability insurance is issued for an extended term. Such policies usually only expire when the insured reaches age 65, dies, receives benefits for the maximum payment period or ceases to pay premiums. In contrast, sickness and accident policies issued by general insurance companies are renewed annually. General insurance companies cannot issue sickness and accident policies which provide cover for more than three years because such policies are life policies under the *Life Insurance Act 1995*.

As general insurance sickness and accident policies are typically annually renewable, an insured is subject to a new duty of disclosure each time a policy is renewed which means that the terms offered by the general insurance company may change or cover may not be offered. General insurance companies can stop providing cover whenever they wish, eg if the product is no longer profitable or if the insured or a family member suffers or is more likely to suffer an illness or injury for any reason. This is not the case for life insurance disability policies. Consequently, there are important considerations for consumers choosing between a disability policy offered by a life company and a sickness and accident policy offered by a general insurance company.

IFSA is concerned that if the proposed changes for general insurance products do not equally apply to life risk insurance products there will be a significant advantage for general insurers and general insurance advisers which would undermine the original policy objectives of the *Financial Services Reform Act.* At the very least, IFSA

submits that disability policies issued by life companies should be subject to the same level of regulation as sickness and accident policies issued by general insurance companies.

IFSA also notes that, unlike other general insurance policies, sickness and accident policies are treated as tier 1 products under ASIC Policy Statement 146 which sets the competency standards in relation to retail product classes.

6.6 Consumer credit insurance - Consumer credit insurance (**CCI**) may comprise either a general insurance product or a life risk insurance product or, more commonly, a combined product with a general insurance component issued by a general insurance company and a life insurance component issued by a life company. In all cases, it is essential that a level playing field should apply.

IFSA notes that the standard cover provisions of the *Insurance Contracts Act 1984* also apply to CCI policies whether issued by life insurance companies or general insurance companies or as a combination of both. To attempt to regulate a standard terms policy merely because of how it is prudentially regulated appears to IFSA to be inconsistent.

IFSA also notes that all CCI policies (whether they are issued by life insurance companies or general insurance companies or both) are treated as tier 2 products under ASIC Policy Statement 146 which sets the competency standards in relation to retail product classes.

The extension of certain general insurance exemptions to life risk insurance products proposed above would solve this problem. Otherwise, appropriate care will need to be taken when defining 'consumer credit insurance'. The definition in regulation 7.1.15 may not apply to all insurance sold as consumer credit insurance. IFSA can suggest an appropriate definition if required.

7. AML

In line with its endorsement of the FATF standards for Anti-money Laundering, the Government intends to impose requirements for financial service organisations to have in place systems which will enable them to:

- identify and know their clients;
- more effectively detect suspicious transactions;
- enable timely monitoring and tracking of transactions;
- maintain records allowing access by regulatory authorities; and
- assess the risk of money laundering via financial products offered.

Following rejection by the Federal Cabinet, the Government’s initial draft AML legislation was withdrawn and Senator Ellison commenced a series of round table discussions with industry groups including IFSA to seek agreement on, key AML implementation issues, including;

- the use of a risk based approach;

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- identification of new and existing customers;
- electronic Vs document based customer ID; and
- timing for implementation and transitional measures, in particular, balancing the burden of cost on business while ensuring that Australia meets international/FATF obligations from an early date.

IFSA then produced position papers on a preferred AML regulatory regime, Electronic Verification, Politically Exposed Persons (**PEPS**), and low risk products. During the course of the Ministerial roundtable discussions IFSA also met separately with representatives of the Federal Treasury, Attorney General's Department, Department of Prime Minister & Cabinet and the Minister for Justice & Customs Senator Ellison in order to pursue our views on principles based legislation and Electronic Verifications solutions. The Government has advised that they are committed to developing a principles based anti money laundering regulatory regime which will be technologically neutral and thus permit electronic verification as an alternative identification means.

The Government has indicated that it expects a draft exposure Bill to be released later in November which will have a 4 month consultation period. In the meantime, IFSA has met with Austrac to pursue our offer to prepare draft guidelines for the managed funds industry in consultation with Austrac and a sub working group of the AML working group is currently drafting some broad outlines for the Guidance Notes.

Government should work closely with industry in the development of the new AML regime – industry would prefer that implementation of the regime is not rushed and that time is taken to ensure that a practical and efficient regime is developed.

A principles based regime is required that permits individual financial services providers to implement AML programs that best manage the risk of money laundering for their particular customers, products, distribution channels and business model. A risk based approach that allows organisation to design and implement appropriate AML controls is required. A one size fits all approach will not work. Government should draw on the experience and approach of other jurisdictions where industry guidelines and codes have been developed.

Electronic solutions should be considered where possible to ensure that costs are reduced. In particular electronic identification systems can overcome many of the industry and customer concerns associated with non face-to-face identification. Government should continue to work with industry to refine IFSA electronic identification systems proposal based on current technology and processes around the current use of TFNs where the ATO cross matches against its data and sends the institution a "red flag" if there is an anomaly.

8. INSURANCE CONTRACTS ACT

IFSA welcomed a review of the *Insurance Contracts Act 1984* (Cth) (**ICAct**), commissioned by the Government. However, the goodwill generated by Government instigating the review is being undermined by lack of progress in the drafting of an exposure Bill.

Since the introduction of ICAct, there have been significant changes in the life product mix from Whole of Life and Endowment policies to pure risk insurance products (Term Life, Disability Income and now Trauma). The ICAct has not kept pace with this change and has caused a number of problems for insurers. In particular, the remedies in the ICAct are no longer appropriate given the changes over the last 20 years.

The table below clearly shows how the change by type of product has changed since 1972.

Ordinary Individual New Business by Type of Policy

Year Ending 30 June	Whole of Life & Endowment	Term	Investment A/c & Linked	Accident Sickness & Disability	Group Life & Credit Life	Other
	%	%	%	%	%	%
1972	95.3	3.3	-	1.4	-	-
1974	92.6	5.7	-	0.2	-	1.5
1976	88.4	9.0	-	1.2	-	1.4
1977	80.0	14.9	-	3.7	-	1.4
1978	75.3	19.0	-	4.2	-	1.5
1982	40.7	19.5	23.2	11.4	4.2	1.0
1992	16.7	19.6	34.5	23.7	3.81	1.7
1994	8.4	34.4	16.8	33.4	4.6	2.4
1996	6.1	36.4	12.6	36.7	5.8	2.4

Source: Life Insurance Commissioner 37 Annual Report-1982 and the Insurance & Superannuation Commission Quarterly Statistical Bulletin December 1997

IFSA recommends that an amending Bill to provide appropriate remedies applicable to the life insurance industry and accompanying regulations are completed and passed by Parliament as soon as possible.

9. HREOC

The Government responded to the Productivity Commission's Report No 30 following the inquiry into the *Disability Discrimination Act 1992* (**DDA**) with an announcement in January 2005.

The Productivity Commission examined the social impact of the DDA on people with disability and on the community as a whole. It considered whether the objectives of the legislation had been achieved. It also examined the legislation's impact on competition and whether amendments to the legislation were warranted.

The Report contained 32 recommendations 26 of which were accepted by the Government either in full, in part or in principle. The action required to give effect to those recommendations will enhance the benefits of the DDA to ensure that it continues to provide net benefits to the Australian community as a whole.

The Government accepted Recommendation 12.1 in principle. That recommendation 12.1 provided that the DDA should be amended to clarify what are 'other relevant factors' for the purpose of the insurance and superannuation exemption (s.46). However, the Government did not accept recommendation 12.2 which provided that the DDA should be amended to limit the application of the insurance and superannuation exemption (s.46) and should only apply if, when requested, insurance and superannuation providers give clear and meaningful reasons for unfavourable underwriting decisions (including an explanation of the information on which they have relied). Instead Government accepted that it was more appropriate to use industry codes and agreements to provide adequate reasons to consumers.

While the Government agreed that it is appropriate for industry to disclose reasons to persons subject to unfavourable underwriting decisions, it sought the co-operation of industry to implement the recommendation. Industry policies should ensure that the reasons given are clear and meaningful and they explain the actuarial, statistical or other basis for the decision, where relevant data is available. If this was not being adequately implemented by insurers, the Government indicated that it would give further consideration to whether legislative amendment is appropriate.

In its response to the recommendations of the Productivity Commission's review, the Government announced that the Attorney-General and Treasurer would ask the Insurance Council of Australia, IFSA and HREOC to develop appropriate materials for use in industry codes and guidelines[6]. To date, no approach has been made and despite the Government decision, HREOC released a new Insurance & Superannuation Guideline in March 2005 providing little guidance to the industry.

The approach taken by HREOC has not been of assistance to industry and this matter is unlikely to be progressed until the commitment from Government is initiated. IFSA recommends that the Government act on its recommendation of 27 January 2005 for the development industry codes and guidelines.

10. MANAGED INVESTMENTS TAX REVIEW

The challenge for the funds management industry is to improve cost efficiency without compromising our well-recognised high level of service and corporate governance. Improved cost efficiency may also result in greater investment returns to current investors, and boost the retirement savings of future generations of retirees. Tax simplicity and certainty can drive greater efficiency in what is already a world class industry. Complexity without a sound economic basis can act as a 'dead hand' on industry.

The current trust taxation laws are unnecessarily complex, archaic and have not kept pace with the changing nature of the funds management industry. For example, as the industry has developed in sophistication over time, there has been increased specialisation and cross-investment (eg. multi-sector funds investing into single sector funds). This, in turn, has created additional complexities for the accurate reporting of results through the various tiers of trusts back to the retail investor, on a time critical basis.

Current Tax Trust Issues that require reform include:

- Tax treatment of gains or losses on disposal of assets
- Present entitlement
- Deficiency / excess of distributions (unders/overs)
- Non-resident unit holders and simplified withholding tax regime
- Trust loss rule
- The ability to trace ownership through a chain of trusts
- MITR trusts should be entitled to the same FIF relief as currently applies to complying superannuation funds
- Product rationalisation, including rollover relief is required to facilitate tax efficient rationalisation
- Trusts should be able to pass through franking credits provided they have at least $1 of trust income (irrespective of whether it is domestic or foreign sourced income)

Industry players often adopt a common but not identical approach to tax at a practical level, with the intention of achieving unitholder equity within the limits of their funds management processing systems. However, where systems functionality does allow the tax laws to be properly applied, this will occur notwithstanding the possible inequitable outcome to unitholders.

These practices adopted by the funds management industry are not intended to obtain unintended tax consequences as this would not only be inconsistent with the tax law but could also very well be inconsistent with the fiduciary duties of the funds manager in reporting tax results to the unitholders.

Industry has identified the need for a self-contained tax regime. This is not unusual in the Australian context. Superannuation and life insurance companies, which are also collective investment vehicles, have their own tax regimes:

- Superannuation funds - Part IX of the *Income Tax Assessment Act 1936*;
- Life insurance companies - Division 320 of the *Income Tax Assessment Act 1997*.

It is clear that there is business need for the tax laws applying to the funds management industry to be simplified, as tax simplicity will drive greater efficiency in terms of reducing costs, improving accuracy and also minimising the likelihood of delays in

reporting results. It is acknowledged that there are many operational issues currently faced by the funds management industry, but these can be overcome by establishing a simple and efficient system for the industry to operate in.

As this project would greatly benefit over nine million Australians with a $920 billion interest in the managed funds industry it is important that the Government support this initiative. The project should not involve tax expenditure or cost to the revenue. Indeed, if it succeeds it will reduce significantly the cost of tax compliance and will boost confidence in collective investments. It is important that the Government, through Treasury, the Australian Taxation Office, become involved in this initiative and work together with Industry and Professional participants towards sensible and balance reform.

The compliance burdens and uncertainties in relation to the current application of the Income Tax Assessment Act to the managed investment industry should be addressed by legislative reform to introduce a simplified and self-contained taxation system for managed investment products. Reforms should be revenue neutral.

11. REGULATION OF IDPS

IFSA believes that regulation of IDPS within the Corporations Act (rather than by Class Order) is overdue. The status of IDPS should be clarified and a regulatory framework developed that recognises the true nature of an IDPS as fundamentally a financial service[7]. This is largely a structural change. Although there are some requirements of the Class Order that we would like to see changed, the current regulatory requirements could be accommodated within the Corporations Act (with some amendment), if IDPS were to be regulated as a financial service.

In addition to the structural change suggested, the following key outcomes are sought by IFSA and the industry participants - irrespective of whether there is a structural change to the regulatory framework. IFSA's objectives are aimed at:

(a) **reallocating regulatory responsibilities** amongst the various licensees involved in the operation and distribution of IDPS to align legal obligations with practical responsibility;

(b) **clarifying the consequences of breach** in order to provide greater certainty to IDPS operators and ensure that the consequences that flow from a breach are proportionate to that breach;

(c) **achieving regulatory harmonisation** so that, wherever practicable, the regulation of IDPS is consistent with other services[8];

(d) **rationalising disclosure obligations** that arise under the IDPS Guide requirements and the financial services guide ('FSG') disclosure obligations under the Corporations Act;

(e) **rationalising underlying disclosure obligations** both in relation to section 1012IA disclosure requirements and the mechanism for providing IDPS and underlying disclosure documents to clients;

(f) **maintaining the existing regime for periodic reporting**;

(g) **ensuring a smooth transition and/or grandfathering** in relation to any structural changes brought about by this review; and

(h) **focusing on policy outcomes rather than regulatory restraints**.

While this submission focuses primarily on IDPSs relying on the Class Order, some of the proposals discussed would also be relevant to many IDPS-like schemes and superannuation master trusts.

IFSA is currently reviewing a submission for consideration by Government and regulators.

12. ACCOUNTING STANDARDS

12.1 General

International accounting standards were imposed on the unlisted managed funds industry contrary to the submissions from industry. Industry incurred significant costs without any compensating benefit of global harmonisation.

It should be noted that Australia operates the 4th largest managed funds market in the world and, in terms of funds under management, is exceeded only by the US, France and Luxemburg[9]. The US, the largest market, has not adopted IFRS[10].

IFSA members generally support the Government commitment to comparable financial reporting through the adoption and Australianisation of International Financial Reporting Standards (**IFRS**). However that commitment is given in the context of the development of a globally competitive market.

The decision to harmonise Australian standards with IFRS effectively means the adoption of IFRS as Australian law. In relation to future implementation problems, the concern of our industry is:

- Scope of Application; and
- Australian input and control in the formulation of IFRS.

Scope of application

Given the differences in the scope of application of Australian accounting standards that have a broad application, and IFRS which applies only to listed entities, there is a need for the Australian Accounting Standards Board (**AASB**) to undertake a thorough cost-benefit analysis of proposed changes before they become part of Australian law. We note that the requirement for a cost-benefit analysis is a requirement under the current law – section 231 of the *Australian Securities and Investments Commission Act 2001* (**ASIC Act**). Australian authorities need to adopt harmonised IFRS with 'open eyes'.

As part of Australia's new harmonisation agenda, there needs to be an appropriate statutory process to ensure accountability of the standards-setters. While the main statutory objects of accounting standards[11], and the responsibilities of the AASB in formulating such standards[12], are set out in Part 12 of the ASIC Act, section 234 of the ASIC Act operates to excuse failure in the standard setting process. Section 234 provides that "a failure to comply with this Division (Division 2 of Part 12) in relation to the making of an accounting standard does not affect the validity of the standard."

While IFSA members generally support the concept of the harmonisation of accounting standards internationally, Australia should alone not be a 'testing ground' for international standards given the potential for damage to Australian industry. Australian accounting standards are broader in their application to business entities than is IFRS in European Community (**EU**) Member States. It is, therefore, essential that a thorough domestic review and cost-benefit analysis be undertaken before any particular IFRS requirements are applied to particular Australian industry sectors not likewise subject to IFRS in EU Member States.

Following the announcement that Australia would adopt Australianised IFRS from 1 January 2005, IFSA members identified a number of issues with the application of certain of the new standards[13] to unlisted managed funds. IFSA members determined that they would be faced with the introduction of measures that are deficient and would, rather than harmonise, put Australian practice at odds with that of our major international competitors. The European Funds Industry Association, FEFSI, had also identified similar difficulties to those identified in Australia. However, it was noted that IFRS would not be applied to unlisted managed funds of EU Member States until 2007, at the earliest. This we submit may explain the lack of urgency of EU Member States in determining the issues identified.

Following consultation with Government, ASIC and the AASB, the issue of ASIC Class Order relief on 22 December 2004 avoided the immediate risk of damage to the industry. However, while the relief avoided the immediate operational difficulties it has required unlisted managed funds to now maintain dual books of account - for statutory financial reporting on the one hand and, on the other hand, for operational accounting purposes in relation to asset valuation, unit pricing and other fund calculations. This, however, has resulted in Australian unlisted managed funds incurring additional costs to introduce IFRS compliant processes and systems for apparently no benefit in terms of global harmonisation. Additionally, it makes our

industry less transparent to unitholders because under the new arrangement unit prices and financial statements will be determined using different pricing criteria. The use of two books, one for unit pricing and another for financial reporting, has the potential to cause investor confusion, particularly given that net assets of funds will fall to nil, and that the implied unit price in a set of financial statements will be different to the actual price investors transact at. This is exacerbated by the fact that superannuation funds will continue to account for members' funds as equity.

While the managed funds industry considers that there are real benefits to be gained through harmonised international standards, it considers that there can be significant competitive disadvantages in being the first to adopt and apply international standards. Particularly, where they have not been thoroughly considered in either the international or Australian domestic context. It is noteworthy in this regard that the key standards affecting managed funds (IAS 32 and 39) are currently the subject of much debate and proposed amendment, largely because listed entities in the UK and Europe are now in the process of transition and are lobbying heavily for change. Indeed, we understand that there are currently proposals with the IASB to reverse the IAS 32 requirement to reclassify unitholder funds as liabilities, and conjecture that the eventual transition of the US to IFRS will result in reverting to valuing assets at last sale rather than bid price. This means that the Australian industry (and ultimately the consumer) is currently incurring costs to comply with requirements that may revert to rules similar to existing Australian GAAP within 5 years or even less.

It is the position of industry that the structure for mandating accounting standards in Australia must require thorough analysis, consultation, consideration and review by the AASB with industry before any recommendation is made to the Parliament. This will require amendment to the law.

Australian input and control in the formulation of IFRS

Commencement of IFRS in Australia is, of course, only a first step in the bedding down of Australian IFRS. Industry needs direction from Government and a greater understanding of:

- Australian involvement in the development of future accounting standards before they are introduced into Parliament; and
- the consultation process for the development of Australian/IFRS standards.

Industry must have confidence in the accounting standard setting process and, must have effective avenues of redress if accounting standards developed by the International Accounting Standards Board (**IASB**) do not satisfy aims and objectives of Australian standards as set out in Part 12 of the ASIC Act.

It is not satisfactory, as has been stated by the AASB representatives on numerous occasions in the recent past, that all problems and issues should be referred to the IASB for consideration and determination. If that be the case, the question arises as to what the future role of the AASB is if it has effectively been replaced by the IASB, a body that is not answerable to the Australian Parliament. Additionally, there are obvious difficulties in terms of distance, time zones and cost in Australian industry making effective representation to the IASB.

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The IASB is described in its Mission Statement as:

> "... an independent, privately funded accounting standard-setter based in London, UK. The Board members come from nine countries and have a variety of functional backgrounds. The IASB is committed to developing, in the public interest, a single set of high quality, understandable and enforceable global accounting standards that require transparent and comparable information in general purpose financial statements. In addition, the IASB co-operates with national accounting standard-setters to achieve convergence in accounting standards around the world."[14]

The status of the IASB as an "independent, privately funded accounting standard-setter" has given rise to concerns about its power and lack of accountability. As long as the adoption and implementation of IFRS in Australia also satisfies a domestic Australian process for accounting standards, Australia's national interest will be served. But this should not mean the slavish acceptance of IFRS.

Given the size of the Australian funds management industry, we should expect Australia to be significantly and influentially involved in the making of accounting standards that impact the managed funds industry. The move to IFRS and the growth of the global funds management industry should provide an opportunity for the development of specific funds management industry standards.

IFSA has taken the initiative to raise these matters with the International Investment Funds Association (IIFA). At its recent conference in Washington, the IAS/IFRS provisions for mutual funds were considered and a resolution was passed calling for revised provisions which reflect the different characteristics of mutual funds. The resolution urged the IASB to ensure that mutual funds receive treatment which produces meaningful reporting for investors. Australian regulators should take note of these developments and seek to ensure that the Australian funds management industry is again not prematurely saddled with additional compliance costs.

Conclusion

There are benefits for Australia in participating in the development of international financial reporting standards. However, such benefits must be assessed against costs to Australia. The single biggest issue facing the funds management industry in terms of applicable accounting standards is to ensure that the standards facilitate the Australian economy by:

1) reducing the cost of capital;
2) enabling Australian entities to compete effectively overseas;
3) having accounting standards that are clearly stated and easy to understand; and
4) maintaining investor confidence.[15]

12.2 AASB 1046 – Director and Executive Disclosures by Disclosing Entities

On 21 June 2004, David Boymal, the chairman of the AASB, issued a Media Release announcing that an Accounting Standard titled "Director and Executive Disclosures by Disclosing Entities" – AASB 1046, was to apply to all disclosing entities, irrespective

of how they are structured and accordingly remuneration paid to directors and officers by an RE or its related party is not exempted by the definition of related party in AASB 1017. That decision was based on a new interpretation of section 285(3)(b) of the Corporations Act 2001.

Up to 21 June 2004, section 285(3)(b) was interpreted as not requiring the executive remuneration of directors and officers of the responsible entity of a managed investment scheme (a different economic entity) to be reported in the statutory accounts of the scheme. By its Media Release of 21 June 2004 the AASB had actually made a significant and unilateral change to the requirements of the law for the disclosure of directors and executive remuneration in a managed funds context**.**

IFSA, and a number of its individual members, have made submissions with limited success to each of the AASB and ASIC in relation to this matter. The wash-up of those representations was that AASB regarded itself as bound by a literal reading of the relevant provisions of the law and, ASIC would not grant relief in relation to a standard that AASB has both made and confirmed in its application to managed investment schemes.

AASB Press release rationale

In his press release of 21 June 2004, the Chair of the AASB stated that "in the context of the current debate on fees and expenses of managed funds, it is important that the cost of governance is identified for each MIS". It is apparently on this basis that the AASB unilaterally determined that it would change the operation and practice of the law to date. Unfortunately, the statement merely reflects the AASB's lack of understanding of the managed investments industry and inability to distinguish between corporate structures and responsibilities, and those of applicable to managed investment schemes.

Cost of Governance

Other than in the limited case referred to below, the disclosure of directors' and executives' remuneration does not meet the AASB's stated aim of providing information as to the cost of corporate governance of a scheme. The cost of corporate governance of a managed investment scheme is the fee paid to the responsible entity of the scheme, not the remuneration of a few people employed by the responsible entity or its holding company. The exception is where a company has no business other than as the responsible entity of a single managed investment scheme, in which case the fees paid to its directors and executive officers will be directly relevant to the expenses of the scheme. Very few schemes would fall in this category.

Scheme members do not have any authority over the remuneration paid to directors and executives of the responsible entity. Where the responsible entity is part of a corporate group and/or responsible for multiple schemes, the disclosure of the remuneration of directors and executive officers is at best merely voyeuristic and at worst misleading

By investing in a managed investment scheme, both scheme members and the responsible entity are bound by the constitution of the scheme and the terms and conditions of products issued under that scheme. A responsible entity receives management fees, performance fees (depending on terms of constitution and Product

Disclosure Statement), and reimbursable expenses (expenses which the responsible entity bears but which, under the terms of the constitution of the scheme, can be on-charged to the scheme) from a scheme. Further, the responsible entity has fiduciary responsibilities to scheme members that effectively prohibit the receipt of any secret payment or commission.

How the responsible entity chooses to spend the fees paid to it for the management of the scheme is not a matter relevant to scheme members. It is accepted that disclosure of director and executive remuneration is appropriate in the corporate context where compensation paid will directly impact returns to shareholders, but this is not the case in a managed investments context where the level of director and executive remuneration does not impact member returns. The fee paid to the responsible entity of the managed investment scheme, as prescribed by the scheme constitution, is disclosed to scheme members.

International Practice

IFSA's counterpart organisation in the UK has advised that trustees and fund managers are, as in Australia, required to disclose their trustee and management fees in the accounts of a unit trust, but are not required to disclose the remuneration of their executive officers in the trust accounts. The Australian requirement struck them as novel, unusual and unnecessary given that trustee and management fees were disclosed costs of the unit trust whereas executive remuneration paid by the company was relevant only to the company.

It is noteworthy, at a time when Government has sought to adopt international financial reporting standards in the interests of global harmonisation that the Australian regulators have sought to impose on the Australian funds management industry additional and unnecessary administrative burdens.

Conclusion

If the law is not clarified in the manner sought, the managed investment industry will inevitably restructure and many of the benefits of moving to a flatter and simpler single responsible entity regime could be lost.

Recommendation

It is our recommendation that section 285 of the Corporations Act be amended to make clear that the disclosure of executive remuneration in the financial accounts of disclosing entities that are managed investment schemes is limited to remuneration directly incurred by the scheme.

13. TECHNOLOGY

A range of matters have been raised in IFSA's earlier submission to FSAC[16]. They include:

13.1 Electronic signatures – Some members of the industry are currently undertaking operational feasibility studies to identify whether the use of electronic signatures to validate transactions is commercially viable, and legally binding.

Electronic signatures have the added benefit of capturing bio-metric information, which will inhibit fraud thus increasing security. Such developments should be facilitated.

13.2 Document storage – Currently when a document is sent to a Financial Service Provider, for example an application to open a managed fund account, the document is digitally scanned into a document storage system and the physical form is sent offsite to be stored. Electronic documents are easily accessible. However, there are concerns about the ability to prove that electronic documents are a true and correct reflection of physical documents, as electronic documents may be rebutted in the court of law (as stipulated in the Evidence Act).

The industry is seeking a ruling that documents that have been stored electronically should be granted the same legal weight as if they were the original physical document itself. A class order from ASIC to this effect could solve the challenge.

13.3 Proposed Anti Money Laundering (AML) legislation – IFSA Members provide financial products on technology platforms. Legislation, such as the proposed AML requirements, will impose a significant additional regulatory and cost burden on industry and its customers. Such legislation must be technology friendly if cost efficiencies are to be maintained.

13.4 Call Centres – *having to script a full Product Disclosure Statement's (PDS) information for dialogue with investors* – Due to current disclosure requirements, Call Centre operators are required to provide vast amounts of information (often not meaningful to the question being asked) to investors when they ring a call centre. Greater latitude to be able to provide more tailored information to an investor when they call is desirable. We seek to work with the regulators to identify an appropriate disclosure regime for this area.

13.5 Electronic Documents - The issue: Ambiguity concerning acceptable methods for providing required reports and information electronically.

While there have been considerable advances in the use of electronic documents and signature verification over the last 10 years, further cost reductions and security enhancements may be achieved by promoting and ensuring in the law that electronic communications can always be used as a communication method.

While it is clear that electronic distribution of reports and information required under the legislation is permitted, there remains some ambiguity concerning the acceptable technical means for the delivery or provision of these reports. More specifically, there remains an inconsistency between the legislative requirements for the provision of annual financial reports by companies to members electronically when compared with the requirements for similar methods for other industry participants.

Under the current legislation, there is a general requirement for the managed investment industry that any reports or information that is to be "given in electronic form" to a client must be provided in a form that "…will allow the person to whom it is given to keep a copy of it so that the person can have ready access to it in the future" (Corporations Regulations 2001 (Regulations): 7.9.02B; 7.9.63I; 7.9.75B). This requirement creates some ambiguity concerning the acceptability of providing clients

with a "pull solution" – where a link is provided to a client via email allowing for them to access and download ("pull") the material from the internet.

In contrast to this, while Section 314 of the Corporations Act also allows for companies and registered schemes to provide annual financial reports electronically, it goes one step further by allowing for members to specifically nominate an electronic "access means" for these reports. Because of this, the ambiguity surrounding the acceptability of "pull solutions" is removed.

Accordingly, IFSA believes it important that ambiguity surrounding the acceptability of "pull solutions" be removed, allowing for clients to nominate both how they receive and access required reports and information.

Recommendation

The ambiguity concerning the acceptability of "pull solutions" could be addressed by amending the Regulations that deal with information presented electronically. More specifically, Regulations 7.9.02B, 7.9.63I and 7.9.75B could be amended by inserting the following sub regulation (3) into each Regulation:

> *(3) In relation to a matter in sub regulation (1) and (2), information that is to be given in electronic form may be presented, made available, or access to it provided, in any way agreed to by the holder, person or their agent.*

Benefits for investors if clarity is provided to allow increased use of electronic document distribution methods

The electronic distribution of required reports and information dramatically improves efficiency and reduces the compliance burden on the industry as a whole. The provision of documents to investors electronically will help reduce superannuation and non-superannuation providers' administration costs. While documents are able to be provided electronically with the consent of the member[17], the logistics of obtaining member consents for a large fund may be difficult.

The restrictions on providing documents electronically were put in place over 6 years ago and do not reflect the significant technological advances made in that time or their enthusiastic acceptance by the investing public. The law should be amended to enable a fund responsible entity or trustee to send communications to a member electronically (and via web-link) where the fund responsible entity or trustee has the electronic address of the member. Where a member does not have an electronic address, the member should have the option to be able to access communication via the fund website.

One IFSA member has advised that the cost to it of producing annual reports in 2004 was $200,000 and with preliminary estimates for the cost of production and distribution this year being approximately $500,000. Being able to provide documents electronically will produce cost savings for funds and their members. Such cost reductions would provide an avenue for market forces to potentially enable lower fees to consumers. Market competition is currently intensifying (as has already been seen with some IFSA Member companies reducing their fees by up to 32 percent).

Other Benefits of Electronic Documents includes secure storage of information from fire or theft, and the environmental benefit of reducing the amount of paper being used and wasted.

Potential Cost Savings

The potential cost saving for the superannuation industry “only”, assuming only 60 percent of investors avail themselves of this method of communication, is up to $250 million annually.

13.6 Telephone Proxy Voting – Proxy voting via telephone is not allowed under current legislation and has been raised as an issue. Some members would like to see telephone voting made available. Amendments to the Corporations Act would be required to allow proxy voting to be undertaken over the telephone. There are also challenges with the regulations, as voting over the telephone does not constitute the provision of a document, required under the current regulations.

By allowing telephone proxy voting (following identity verification procedures) participation rates (especially by smaller shareholders) could increase. Additional information in relation to the regulatory changes that would be required is available upon request.

13.7 Register of Complying Superannuation Funds (ROCS) - Superannuation Choice legislation has now been enacted and a number of administrative issues have arisen. One of these issues is that the ROCS register (currently operated by the Australia Taxation Office) is not machine readable and an organisation cannot download the register to ascertain that a fund is complying. Ideally the industry would like ROCS to be downloadable, so that the validation process can be automated.

The industry understands one of the challenges with making the ROCS register downloadable is that spammers could use it to target superannuation entities. A solution to this challenge would be to restrict access to the downloadable register. Access to the ROCS register, and any subsequent updates, could then be provided once the validity of the requesting organisation was established. Alternatively, valid organisations could be provided with a login and password to a secure website from which the information could be downloaded. Other suitable options should also be reviewed as the automation of manual processes will lead to a more secure and efficient superannuation industry.

With Superannuation Choice now in operation, the ATO and government need to raise the priority level of the ROCS register enhancements.

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14. COSTS

A conservative estimate of the current cost of IFSA member companies complying with the financial service industry regulation, based on confidential research, is over $1.2 billion.

KPMG conducted a survey entitled "Driving business synergies through risk and compliance initiatives". As part of this survey 100 Chief Executive Officers (Managing Directors) where interviewed to gain an understanding of the compliance process and how compliance was costed throughout group entities and even within businesses themselves.

Compliance is an indirect cost in some organisations, which makes it difficult to estimate the full cost of complying with regulations.

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[1] Draft FSR Refinements Regulations

[2] Section 672DA – Beneficial Owner register

Section 1013DA provides that 'ASIC may develop guidelines that must be complied with'. Guidelines released by ASIC prescribe information relating to labour standards and environmental, social and ethical factors that **must** be included in the product disclosure statements (PDSs) of investment products.

[3] Explanatory Memorandum, *FSR Act 2001*, p.1.

[4] Successor Fund Regime under Part 18 of the *Superannuation Industry Supervision Act 1993* and Part 9 of the *Life Insurance Act 1995*.

[5] Section 1013C(3) of the Corporations Act 2001 provides that "The information included in the Product Disclosure Statement must be worded and presented in a clear, concise and effective manner." A similar requirement applies to a prospectus under section 715A of the Act. Each provision was introduced as part of the Financial Services Reform measures.

[6] News Release, Attorney-General the Hon Philip Ruddock MP, 27 January 2005, 'Review of the Disability Discrimination Act, Recommendation 12.1.

[7] This is consistent with current ASIC Policy - see PS 148.15.

[8] If we are arguing for an FSG as the sole disclosure document, this is not consistent with a regulatory harmonisation objective, as for example superannuation master trusts are regulated as financial products and produce PDSs. Consider deletion of this objective. We are really asking for IDPS to be regulated very differently than other functionally similar products.

[9] See Attachment A.

[10] The IASB and the US Financial Accounting Standards Board (FASB) issued a Memorandum of Understanding on 29 October 2002 as part of its project aimed at reducing the differences between IFRSs and US GAAP – see Attachment B.

[11] Section 224 of the *Australian Securities and Investments Commission Act 2001*

[12] Section 229 of the *Australian Securities and Investments Commission Act 2001*

[13] AASB 139: *Financial Instruments: Recognition and Measurement* and AASB 132: *Financial Instrument Disclosure and Presentation*

[14] www.iasb.org/about/index.asp

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[15] See section 224 of the *Australian Securities and Investments Commission Act 2001.*

[16] IFSA Submission to FSAC dated 12 October 2005.

[17] Section 9 Electronic Transactions Act 1999.

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	Act	Government Stakeholder	Issue	Proposed Solution
1.	Income Tax assessment Act	Treasury	Omnibus Technical Tax Bills	Need for an annual omnibus technical bill to correct the myriad minor changes that are identified each year but individually are too small to have any priority.
2.	Income Tax assessment Act	ATO	Currently unit trusts need to pay two different types of withholding for non residents. Withholding under s. 128B and withholding under s. 98. The latter is paid annually on assessment; the former as an estimate on the quarterly BAS.	Registered schemes should not have to comply with two collection schemes but should just pay it all as part of the assessment process.
3.	GST ACT	ATO	The requirement for Responsible Entities to lodge multiple Business Activity Statements (BAS) rather than one aggregated BAS	Creation of an aggregated BAS statement.
4.		APRA / ATO	Duplication in reporting. APRA requires a report of containing information about contributions which can also be obtained from the tax return.	The Tax return should be altered to provide APRA with the information they require in the necessary format, and to eliminate any duplication. Currently, some of the information on the company tax return is given to the Australian Bureau of Statistics, so the principle of providing information for multiple departments in the one form is already functioning.
5.			Super fund members who are 'eligible persons' (self employed or substantially self employed) can lodge an 82AAT notice with the fund in respect of an income year many months (or years) after the end of the relevant tax year. A member cannot lodge an 82AAT with a particular fund once they have ceased to be a member of the fund.	It is suggested that a mechanism could easily be inserted into tax law to allow the successor fund to take over the 82AAT process in respect of the transferor fund, and to include the amount covered by an 82AAT notice lodged after the successor fund transfer in the assessable income of the successor fund. There would be a practical requirement for the transferor fund to provide

				to the successor fund historical details of section 82AAT notices received from members in prior years so that the successor fund can appropriately apply the requirements of sub-sections 82AAT(1B)(a) and (c).
6.			The provision allows a taxpayer to 'smooth' specified lump sum payments over the tax years in which the income accrued. This can alleviate the problem of the lump sum potentially being taxed at higher rates where 'receipts basis' taxation would push the recipient into higher tax brackets than if the lump sum had been taxed in the years over which it accrued. The mechanism can be relevant when a claimant makes a claim under a salary continuance policy issued by a Life Company, and the claims investigation process takes time, or the claim is disputed but ultimately paid. There is an anomaly in the drafting, which has the effect that claimants who have purchased cover direct from the Life Company cannot make use of the mechanism. The mechanism is only available to claimants who have cover via a group arrangement (via an employer or super fund). We are not aware of any policy reason why this would be the case. The inability of customers that have purchased an policy direct from the Life Company to access this mechanism can expose the Life Company to further claims to make good claimants additional tax liability.	The section 12-120 provision in respect of compensation, sickness and accident payments excludes payments made under and insurance policy to the policy owner. Because access to the sec 159ZR smoothing mechanism is dependent upon the application of the PAYG provisions (secs 12-80 and 12-120), clients that directly own salary continuance policies issued by the Life Company cannot benefit from the smoothing mechanism.
7.			The definition of "turnover" in the legislation captures input taxed activity that does not give rise to a GST liability. This can result in a taxpayer having to submit monthly BAS even though its true non input taxed activity level is below the turnover threshold.	The requirement for monthly submission of BAS needs to be altered so that only those with "taxable activity" greater than the threshold are required to submit monthly.
8.	FBT Act	ATO	The reportable fringe benefits regime is overly burdensome for very little revenue collected. Particularly now	Remove the reportable fringe benefits requirements. If there are remaining concerns around

			that the superannuation surcharge has been removed the 'mischief' that this regime seeks to attack has all but disappeared. The cost to employers of complying with the reportable fringe benefit rules is vastly out of proportion with any possible revenue that is collected. The regime also creates a great deal of frustration between employers and employees when initiatives of the employer - which are genuinely directed at improving employee morale, appear of Payment Summaries (for example a 'bring your kids to work day').	particular actions of a small minority, more targeted measures should be adopted
9.	ITAA 1936	ATO	Section 275 can be read such that an agreement to transfer tax liability from a superannuation fund cannot be amended once made. It is clear that the agreement cannot be **revoked** and it would appear that the ATO consider that the amount contained in the agreement cannot be altered. This can cause problems should the fund need to make an amendment to the return. It is proposed that the fund should be able to vary down the amount included in the 275 transfer (it is appreciated that it would not be appropriate for the amount included in the notice to be increased)	If the fund has enetered a sec 275 agreement and realises that taxable income has been overstated an amendment to the fund return can leave the fund in a loss situation (as an amount in excess of the taxable income has been transferred). It is proposed that there is no policy reason why the fund should not be permitted to 'vary down' a sec 275 notice. The mechanism could work in broadly the same way as the 'varying down' mechanism works for section 82AAT notices under sec 82AAT (1)(c)
10.	Income Tax Assessment Act 1936 section 274	ATO	Employer contributions are automatically subject to contributions tax. There are many situations where the Trustee has difficulty in identifying whether or not a contribution is from an employer. There are also situations where a member paying personal contributions becomes entitled to employer support and the contribution status changes. These situations lead to over and under payments of contributions tax.	Provision should be made for the Trustee to be allowed to base the fund's contributions tax liability on the strength of advices from members. In the event of an amended advice, the Trustee would adjust for over and under payments of contributions tax in the year the amended advice is received. Perhaps expand the provision in s 276 Income Tax Assessment Act 1936.
11.	Income Tax Assessment Act 1936 Section 27AAA	ATO	Payments for total permanent disability do not receive the concessional treatment afforded to benefits paid in the event of death. Death benefits paid to dependants are generally free of tax up to the deceased's pension RBL.	A review should be conducted of the tax treatment of disability benefits to take account of recent developments in superannuation and retirement incomes policy.