

ACPSRO's Super System Review Phase 1

Covering Statement

In August 2009 Minister Tanner invited interested parties to make submissions to the Review into the Governance, Efficiency, Structure and Operation of Australia's Superannuation System. This Review has three phases: Governance, Operation and Efficiency, and Structure.

The Australian Council of Public Sector Retirees Organisations (ACPSRO) is a Peak Council representing Commonwealth, including Military, State, Territory and other public sector retirees.

The Superannuated Commonwealth Officers' Association (SCOA), a constituent organisation of ACPSRO, has prepared this submission for ACPSRO. While focussing primarily on the Superannuation funds that are commonwealth or military, SCOA has nevertheless remained aware of the broader application of its preferred model of governance.

ACPSRO is a Peak Council but membership is the province of the organisations that comprise ACPSRO. As a key example, SCOA represents, directly and indirectly, the interests of over 500,000 people when the following are included:

- Commonwealth and Territory Government current contributors to superannuation;
- Commonwealth and Territory Government deferred superannuation beneficiaries;
- Commonwealth and Territory Government superannuation pensioners; and
- Spouses, partners and dependants of each of the above.

Introduction

We believe that the appropriate model for the operation of superannuation funds is the "Trust" model, or a similar model that ensures that all members of a superannuation fund, including those receiving pensions, can have input into the nomination and appointment process for appointing member representatives to the governing body of that superannuation fund. This is particularly relevant for defined benefit public sector superannuation funds, where a substantial segment of the membership of the superannuation funds is receiving pensions from those superannuation funds.

Members receiving pensions from the Commonwealth and military superannuation funds currently do not have any input into the selection process of nominees for appointment as member representatives on the governing bodies of their superannuation funds. We believe that legislation

should be put in place to ensure that those receiving pensions have a direct role in nominating member representatives to the governing body of their respective superannuation funds.

Trustees of superannuation funds, including public sector superannuation funds, are generally appointed to make decisions with regards to the investment of the fund. While this is important, it should not be forgotten that trustees are also required to make many decisions in relation to benefit entitlements. This is particularly relevant in defined benefit public sector superannuation funds, where a large number of decisions relate to pension entitlements and eligibility for reversionary benefits. We believe that at least one and preferably more member representatives on the governing body of those superannuation funds should be nominated directly by pensioners or pensioner organisations. This, we believe, would be more acceptable to the beneficiaries and would reduce the number of cases appealed to the Superannuation Complaints Tribunal.

Commonwealth civilian and military superannuation schemes

There are a number of superannuation funds that have been established to provide superannuation benefits for current and retired Commonwealth employees and military personnel. There are four sets of Trustees, which control the following superannuation funds.

Australian Reward Investment Alliance (ARIA)

ARIA is the trustee for the following superannuation funds:

- Commonwealth Superannuation Scheme (CSS)
- Public Sector Superannuation Scheme (PSS) – defined benefit plan
- Public Sector Superannuation Scheme (PSS) – accumulation plan

The ARIA Board of Trustees has seven members. Clause 4.1 of the PSS Trust Deed sets out the method for appointing Trustees to the ARIA Board. This clause states that three of the Trustees shall be persons nominated by the ACTU, provided that a person shall not be nominated by the ACTU unless the ACTU has consulted relevant organisations, as defined in subsection 28(7) of the *Superannuation Act 1990*, in relation to the nomination. Subsection 28(7) of the *Superannuation Act 1990* defines “relevant organisations” as follows:

“Relevant organisation means:

(a) an organisation:

- (i) a substantial number of whose members are members of the Public Sector Superannuation Scheme or eligible employees within the meaning of the *Superannuation Act 1976*; and
- (ii) whose principal purpose is to protect and promote the interest of its members in matters concerning their employment; or

(b) an organisation having as one of its principal purposes the protection and promotion of beneficiaries under the Public Sector Superannuation Scheme in matters concerning their entitlements as beneficiaries.”

The process for nominating member representatives for appointment to the ARIA Board of trustees does not include all members. The above definition of “relevant organisations” does not include CSS beneficiaries, who include CSS pensioners and deferred benefit members, or members of the PSS accumulation fund. The ACTU have never consulted organisations representing beneficiaries. When organisations representing beneficiaries asked for consultation, the ACTU responded by advising that they believe they have no obligation to consult with such organisations.

The ACTU only represents a small number of members of the CSS and PSS. The majority of members (approximately 54% of all members¹) are pensioners who have never been consulted with regard to nominations for the appointment of member representatives to the ARIA Board of Trustees.

The Commissioner for Superannuation and Chief Executive Officer ComSuper

The Commissioner for Superannuation is the Trustee for the following superannuation funds:

- Commonwealth Superannuation Scheme (1922 Act) – this scheme only pays pensions
- Papua New Guinea superannuation schemes – these schemes only pay pensions

The Commissioner acts alone as the governing body of these superannuation funds. Accordingly, there are no member representatives on the governing body of these superannuation funds.

The DFRDB Authority

The DFRDB Authority is the trustee for the following superannuation schemes:

- The Defence Force Retirement and Death Benefits Scheme (DFRDB)
- The Defence Forces Retirement Benefits Scheme (DFRB) – this scheme only pays pensions.

The DFRDB Authority consists of five members. The Chairman of the DFRDB Authority is the Commissioner for Superannuation². The Minister for Defence appoints the other four members, with three of those members each

¹ Derived from the Annual Report of the Commissioner for Superannuation 2007-2008

² This is specified at section 8 of the Defence Force Retirement and Death Benefits Act 1973

nominated by the Chief of the Army, Navy and Air Force respectively³. There is no mechanism for contributing members or those receiving pensions to have input into the selection process for members of the DFRDB Authority.

The Military Superannuation and Benefits Board of Trustees No. 1 (MSBS Trustee)

- The Military Superannuation and Benefits Scheme (MSBS)

The MSBS Trustee has five members. The Minister for Defence Personnel, Materiel and Science appoints them all. The Chief of the Defence Force nominates two members, with one of those two members being a non commissioned officer. The other four members nominate the Chairman.

There are no nominations from members or pensioners or organisations representing members or pensioners regarding appointments to the MSBS.

Need for consistency in the method of appointing member representatives to governing bodies of superannuation funds

The present arrangement for appointing member representatives to the various trustee boards of Commonwealth and military superannuation funds is haphazard and does not include all contributing members or those receiving pensions. The ACTU provides nominations for appointment to the ARIA Board of Trustees. However, the ACTU only represents a small number of members and does not represent pensioners who form the largest group of members of the Commonwealth superannuation funds. There is no input from serving military members or pensioners to the process of nominating member representatives to the DFRDB Authority or the MSBS Trustee Board.

We are aware that the Government has proposed that ARIA, the MSBS Trustee Board and the DFRDB Authority be merged into one single trustee body. We are unclear if this new Trustee Board will include the 1922 Act or the Papua New Guinea superannuation schemes.

Irrespective of the Government's proposals we believe that it is imperative that there be a consistent mechanism for nominating and appointing member representatives to the governing bodies of superannuation funds. All members of superannuation funds, including non active members such as those with preserved benefits and those receiving pensions, should have an involvement in the nomination and appointment process, whether this is by electing member representatives directly or being nominated by an organisation that represents preserved benefit members and pensioners.

We are aware that submissions to the Military Superannuation Review 2007 have included recommendations that the DFRDB Authority be reconstituted to

³ ibid

reflect a more appropriate representation of contributing members and recipient members.

Conclusion

We are concerned that pensioners are not able to have input into the selection process of member representatives on Trustee Boards, especially public sector trustee boards governing Commonwealth and military superannuation funds. We believe that all members of superannuation funds, including those receiving pensions, should have input into the decision making process of their fund. This can be achieved if such members have input to the selection process of trustees representing members of their superannuation fund. Many decisions made by Trustees affect the entitlements of those eligible for pensions and other benefit entitlements. A trustee representing such members would ensure that fair and reasonable decisions are made in relation to those receiving benefits.

Recommendation

All contributing members and recipient members have the opportunity for input to the selection process of trustees representing the members of their superannuation fund.