

CORPORATE SUPER ASSOCIATION

Streamlining Prudential Regulation Project
Financial System Division
The Treasury
Langton Crescent
Parkes, ACT 2600

By e-mail to SPRSubmissions@treasury.gov.au

15 February 2007

Dear Sirs

STREAMLING PRUDENTIAL REGULATION: PROPOSALS PAPER

I refer to the Proposals Paper issued by Treasury on 4 December 2006. Comments from the Corporate Superannuation Association follow.

The Corporate Super Association represents most of the large corporate superannuation funds and their corporate sponsors. The assets of Association members amount to approximately \$33 billion, representing about 53% of total corporate superannuation sector assets in Australia and some 29 individual employee fund members.

1. Breach reporting

The Association welcomes proposals 1.1 to 1.4 relating to the proposed harmonisation of breach reporting requirements. The requirement to report only material breaches will reduce workload and enable funds and the regulator to identify matters of serious concern. The streamlining of the timeframe and avenue for breach reporting to both APRA and ASIC is also welcome, as well as the proposals to avoid reporting by multiple persons.

Responsible officers

Proposal 1.5 seeks ways to clarify the responsible officer and responsible person definitions to ensure the relevant people are captured. It may be helpful to define "responsible officer" to include the directors, executive officers and senior managers, and that the definition be common to both prudential legislation and Corporations Law. The category "responsible person" could be restricted to auditors, actuaries and other advisers not in an employment relationship.

2. Enhancing APRA's accountability

We accept that the removal of the requirement for Ministerial consent to application of certain SIS Act provisions listed in Table 2 of the Paper will increase speed of decisions and improve accountability. We welcome the potential application of merits review to decisions under the sections of the SIS Act listed in Table 3 (Proposal 2.4). We understand APRA would be able to act prior to the merits review in circumstances where APRA reasonably believes that failure to act would be prejudicial to beneficiaries (Proposal 2.5). Our main concern with Proposal 2.5 would be how APRA would apply the reasonable belief test and whether that interpretation would be consistently applied: published guidelines would be welcomed. We note that it is proposed that merits review would always apply to a decision relating to a natural person. We strongly recommend that any decision to disqualify a person should only be effective if

the person does not exercise rights to appeal to the AAT or to an appropriate Court. We believe that suspension rather than disqualification should apply where APRA has a reasonable belief that failure to act prior to merits review would be prejudicial. The publicity around disqualifications, whether upheld or not, is devastating for the individuals concerned.

We note the proposal that AAT hearings should automatically, subject to AAT discretion, be public. We agree that this will assist transparency but we would wish the legislation to allow for any party to seek the exercise of the discretion to keep the proceedings private.

4. Enforcement

We support proposals to make the disqualification regime more flexible and responsive to different situations.

5. Clarifying reporting obligations under the SIS Act

We support moves to group the reporting obligations in one area of the SIS Act.

RSE numbers (proposal 5.8)

We have concerns with the proposal that the RSE number be relegated and that ABN suffice. We believe that a public document should clearly indicate that the entity is licensed, without need to refer to other sources for the licence number. We are also uncertain of the practical outcome where the trustee comprises individuals. However, an alternative solution would be for the number of the licence to be omitted and for the letterhead to state clearly that the company holds an RSE licence.

Please refer to Bruce McBain on (03) 9620 5155 if you wish to discuss our submission.

Yours faithfully

A handwritten signature in cursive script, appearing to read 'Bruce McBain', written in dark ink.

Bruce McBain
Chief Executive Officer
Corporate Super Association