

18 June 2009

Richard Dean
Reserve Bank of New Zealand
2 The Terrace
P O Box 2498
WELLINGTON 6011

Dear Richard,

ASFONZ SUBMISSION ON THE DRAFT INSURANCE (PRUDENTIAL SUPERVISION) BILL ("the Draft")

We wish to submit the attached in respect [Name of the Bill or Discussion Document] released on [Date].

ASFONZ is a national, not-for-profit, apolitical membership organisation that represents the interests of employers who offer workplace superannuation, their trustees & members, as well as superannuation industry service providers and professional advisers.

Our membership embraces all types of workplace superannuation schemes (KiwiSaver, public & corporate, union-sponsored & industry-based), as well as employers and service providers to the workplace superannuation industry. Current membership comprises around 100 major workplace superannuation schemes and around 50 organisations and individuals representing the various product and service providers for workplace superannuation.

The **mission** of ASFONZ is to be the Voice of Workplace Savings, advancing the sustainable, effective, and efficient delivery of workplace savings outcomes for all involved.

ASFONZ seeks to achieve that mission through:

- Promoting ASFONZ as the "Voice of Workplace Savings"
- Working with the Government to develop policies that achieve improved workplace savings and KiwiSaver outcomes.
- Identifying and promoting initiatives and reforms that will provide efficiencies and enhancements to minimise the extent to which regulatory factors impede delivery of effective and efficient workplace savings outcomes, and those that will encourage sustainable participation in workplace savings.
- Supporting employers, trustees and providers in their delivery of optimal workplace savings outcomes
- Improving public confidence in workplace savings by consistently reinforcing integrity, accountability, and professionalism within the workplace savings industry

- Serving ASFONZ members, and its supporters, by providing a range of services to meet their needs and deliver value for their participation.

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Thank you for the opportunity to make this submission.

Yours sincerely



David Ireland
Chairman

ASFONZ

(The Association of Superannuation Funds of New Zealand)

Submission to the

Reserve Bank of New Zealand

on the

Draft

**Insurance (Prudential Supervision) Bill
("the Draft")**

June 2009

Submission

That registered superannuation schemes (including KiwiSaver schemes) should be excluded unambiguously from the scope of the Insurance (Prudential Supervision) Bill.

Comment

ASFONZ welcomes the opportunity to comment on the Draft Insurance (Prudential Supervision) Bill prior to the draft being introduced into Parliament. We believe that seeking submissions from interested parties on the wording of such a technical piece of legislation, in addition to the usual Select Committee process, will result in a more workable Act.

The ASFONZ submission focuses on a single issue that is of concern to our members. The issue is that, as the draft is currently worded, it could be interpreted that a registered superannuation scheme (which, for the purposes of this submission, includes a KiwiSaver scheme) that offers insured benefits to its members will be classified as an insurer.

This unanticipated potential outcome arises primarily due to the absence of a definition of 'contract of insurance', meaning that membership of a scheme could be regarded as such a contract, with members as 'policyholders', where part of the benefit package provided to members (and for which the trustees are liable) includes an insured component or results in the payment of an annuity. As such, scheme trustees risk falling within the scope of clause 8(1) of the Bill. The consequence of this is that affected schemes would be required to register and would be subject to prudential supervision by the Reserve Bank.

We do not believe that it is intended or appropriate to include such schemes under the draft. They are, of course, already subject to regulatory supervision by the Government Actuary under the Superannuation Schemes Act 1989 and this function has been carried out most competently by the Government Actuary's office for many years.

These schemes, which are largely governed by specifically tailored trust deeds for the benefit of their members, must also comply with applicable trust and securities legislation. Requirements to act in a prudent manner are locked into the way schemes operate, with the Government Actuary taking an active role in supervising schemes' activities.

We strongly recommend that, for the avoidance of doubt, the draft is worded in such a way to ensure that schemes subject to regulatory supervision by the Government Actuary are unambiguously excluded. This could readily be achieved by adding a further sub-section (2) (d) to section 8 of the draft which it is suggested could read:

"(d) a trustee of a registered superannuation scheme (within the meaning of that term in the Superannuation Schemes Act 1989) or a KiwiSaver scheme (within the meaning of that term in the KiwiSaver Act 2006), to the extent to which the person is acting in that capacity."

ASFONZ would be pleased to discuss the issue raised at any time and to work with the Reserve Bank with the objective of introducing workable legislation that best meets the needs of all parties concerned.

Background to the ASFONZ submission

1. Members of registered superannuation schemes (for the purposes of this submission, this term includes KiwiSaver schemes) are commonly offered benefits payable on their death whilst a member of the scheme. Benefits are also often payable on the member's disablement – usually if the disablement is deemed to be of a permanent and total nature.
2. With some schemes these benefits will only represent the value at the appropriate date of the member's accrued retirement benefits. In these circumstances there is no "insured" benefit as the amount payable is the value of the member's account (or accounts) in the scheme.
3. There are, however, many schemes where the benefit offered on death (and/or disablement) is a greater amount than has accrued in their member's account(s). In these situations there is said to be an "insured" benefit.
4. Similarly, where a scheme pays a pension benefit for the life of any beneficiary, the total amount paid may well exceed the amount that has accrued in the member's name during their membership, depending on how long the beneficiary lives. There is also, therefore, the potential for an 'insured' benefit in these schemes.
5. Many of the schemes offering "insured" benefits will make it clear in both their trust deeds and disclosure documents that benefits in excess of accrued retirement benefits (the amount over the value of a member's account(s)), will only be payable where the trustee has been able to arrange satisfactory insurance cover in respect of the member with a life insurance company.
6. ASFONZ does not believe that these schemes should be considered to be carrying on insurance business as defined in section 8 of the draft. The scheme should not satisfy sub-section (1) (c) of section 8 as it would not be liable as an insurer under a contract of insurance, but we are not entirely convinced that the current wording makes this clear.
7. Some schemes will not necessarily make the provision of such "insured" benefits conditional on the trustee arranging insurance cover with an external party. These schemes, which operate on the principal of unallocated funding, may or may not arrange insurance cover with a life insurance company in respect of benefits contingently provided.
8. Registered superannuation schemes that operate on the principal of unallocated funding are required under the Superannuation Schemes Act 1989 to have an actuarial review completed at not more than 3 yearly intervals. This is to ensure that the scheme is funded appropriately to enable it to meet its actuarial liabilities. A copy of the actuaries report must be provided to the Government Actuary.
9. The decision on whether or not to arrange insurance cover external to the scheme, either full cover or in part, would be based on the scheme's assets compared to its liabilities as determined by the scheme's actuary. Any part of the total of benefits contingently payable that are not externally insured but that are in excess of the current value of the scheme's assets could be said to include an element of "self insurance".
10. ASFONZ believes that these schemes would be considered to be carrying on insurance business as defined in section 8 of the draft. Nevertheless, as these schemes are registered under the Superannuation Schemes Act 1989, we do not believe that there is any benefit to them also being covered under the proposed new legislation. A regime for prudential supervision of these schemes is already in place.

11. We note that one of the aims stated in the draft is that compliance, and compliance costs, are not increased. Clearly, for a scheme to be registered under two Acts that are both targeted at prudential supervision would increase the compliance requirements, and therefore costs, of the scheme. ASFONZ believes that the Superannuation Schemes Act 1989 is the more relevant legislation as it covers all aspects of a scheme's operation rather than just the one aspect that the draft covers.
12. ASFONZ is not aware of any situations arising since the enactment of the Superannuation Schemes Act 1989, or its predecessor the 1976 Act, where the superannuation schemes legislation of prudential supervision by the Government Actuary has been found deficient. It is suggested that any change to the prudential supervision regime is therefore unnecessary and undesirable.
13. ASFONZ believes that it is important that the draft is clear and that the meaning of carrying on insurance business in New Zealand, as defined in section 8, specifically excludes registered superannuation schemes for the reasons given above. Sub-section (2) of section 8 lists persons who do not carry on insurance business in New Zealand. It is suggested that the addition of the following extension to sub-section (2) would be appropriate:

“(d) a registered superannuation scheme (within the meaning of that term in the Superannuation Schemes Act 1989) or a KiwiSaver scheme (within the meaning of that term in the KiwiSaver Act 2006).”

Submission Ends
