

**Submission to the Commerce Committee on the
Business Law Reform Bill 2003**

from

The Association of Superannuation Funds of New Zealand Inc.

7 August 2003

Background

The Association of Superannuation Funds of New Zealand Inc. ("ASFONZ")

ASFONZ is an independent national, non-profit organisation founded in 1969. Its current membership comprises over 110 major employer-based superannuation schemes and over 50 organisations and individuals representing the various product and service providers for employment-related superannuation.

The mission of ASFONZ is to promote employment-related superannuation in New Zealand.

ASFONZ will achieve that mission through:

- 1 **Advocacy** – being the recognised voice for all employers and trustees involved in employment-related superannuation, through:
 - (i) advocating legislative and public policy initiatives beneficial to the industry;
 - (ii) making submissions and commentary on existing legislative and public policy initiatives;
 - (iii) issuing regular press releases and other public commentary on matters of wider concern or interest to members; and
 - (iv) staying in regular contact with responsible Ministers, regulatory and industry bodies, the Retirement Commissioner and Government Departments to project, promote and advance members' interests.
- 2 **Education** – promoting trustee, employer and member education through dedicated training programmes, newsletters and special interest seminars.
- 3 **Networking** – providing trustees, employers and service providers involved in employment-related superannuation with a regular forum for sharing ideas and information on industry matters.

According to the Government Actuary's latest annual report (prepared as at 30 June 2002) employer-sponsored schemes covered just 14.6% of the workforce at the end of December 2001, down from 22.5% in 1990 (when the regime had just moved from tax incentives to a “tax neutral” level playing field).

Over this same period the number of employer-sponsored schemes on offer had fallen from 2,242 to just 625. Active membership numbers had fallen by 20% (from 273,065 to 218,284) while accumulated savings had increased by just 10% in aggregate (from \$9.5b to \$10.4b).

We understand from more recent discussions with the Government Actuary's office that the number of employer-sponsored schemes remains in steep decline, with the number of those schemes (after taking into account pending wind-ups) having dropped to 515 - a reduction, since 1 January 2002, of 103 schemes. Given the absence of objective reasons for establishing or continuing schemes, compounded by the effect on scheme funding levels of three consecutive years of negative investment returns, ASFONZ believes that employment-related superannuation in New Zealand is at crisis point, and in fact risks extinction.

Submission

Proposal

The Business Law Reform Bill includes proposed amendments to the Securities Act 1978 and the Superannuation Schemes Act 1989, which have implications for ASFONZ members.

ASFONZ has made a joint submission with other interested groups on the proposed change to the Securities Act whereby an “employee superannuation scheme” (as defined) will be exempt from the requirement to prepare and maintain a prospectus.

This submission deals with all of the proposed changes to the Superannuation Schemes Act 1989.

Dealing with the proposed changes on a clause by clause basis:

Clause 113 Annual reports

Submission 1

We have no issues with the proposed amendment. We believe that the majority of schemes have been operating in a fashion consistent with the proposal for some time.

Clause 114 Members’ rights to information

Submission 2

We have no issues with the proposed amendment. We believe that the majority of schemes have been operating in a fashion consistent with the proposal for some time.

Clause 115 Receiver or liquidator to designate or appoint independent Trustee if required

Submission 3

We support widening the application of the existing provisions in the manner proposed. However, (as we pointed out in our submission to the Ministry of Economic Development on the proposed Bill in July 2001) we consider that, for certainty's sake, the existing section 20A(2) of the Superannuation Schemes Act (defining an “*independent person*”) should contain an additional paragraph (c) as follows:

“Is not, and is not associated with, the administration manager, investment manager, insurer, actuary, auditor, solicitor or any other adviser to the scheme”

We believe that this addition to the definition is important, because of the actual ownership of trustee companies in New Zealand - many are related to managers and/or other service providers.

Clause 116 Winding up of registered schemes

Submission 4

It is proposed that a timeframe of 5 months apply for the preparation of the final accounts of a scheme. We note that this is the same timeframe imposed for financial statements in the ordinary course of business of the scheme. In recognition of the fact that it is not possible for trustees to “schedule” the preparation of wind up financials as they do the financial statements for a continuing scheme, and the unusual circumstances that may arise as a result of the scheme's wind up provisions being invoked, we suggest that an additional month may be provided for.

Clause 117 Offences - No comment.

Clause 118 Second Schedule amended

Submission 5

We support the amendments to the Schedule, which specifically provide for the inclusion of abridged accounts in the annual report.

We note the proposal that several new items of information be included in the annual report; in particular, the date of registration of the most recent prospectus. Should the changes in the prospectus requirements proposed by the Bill become law, this addition will not be relevant for employee superannuation schemes.

ASFONZ wishes to appear before the Commerce Committee to speak to this submission.

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