Regulation of Superannuation in Australia: An Overview

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Abstract

Retirement saving is a topical issue in Australian society today. With longer life expectancy many a debate revolves around whether Australia's retirement savings will be adequate to sustain us for the lengthier periods required without recourse to some form of government funded pension to supplement retirement savings. Hand in hand with that debate is the issue as to whether the superannuation savings that we do have are adequately protected. With increasing superannuation savings so too are the risks that these savings will not be available when the time comes to use them. This paper discusses the regulatory system that exists to safeguard our superannuation system with some consideration given to whether or not the onerous regulations that exist are justified given the current superannuation environment.

Background

Australia's superannuation system is considered by some to be one of the best in the world.[2] The system addresses the OECD recommendations for a multi-pillar arrangement with the current arrangement constituted by a safety net component, an occupational superannuation component and a private sector component. The safety net component is covered by the Age Pension. The Age Pension is means-tested and available to males aged over 65 and females aged over 63, with the pension age for women rising to 65 by 2014.[3] The level of the Age Pension is indexed to 25% of the Male Total Average Weekly Earnings figure.[4] The low level of income which the Age Pension provides is therefore some significant incentive to contribute to retirement earnings by some other means such as private savings. However, there are some components of the Age Pension that make it an attractive proposition such as the elimination of longevity risk and the ancillary benefits that are provided including subsidisation of prescription medications.[5] The fact that the pension is indexed so that it maintains its real value over time also makes it attractive as compared to some forms of private retirement income streams which are not protected against reductions in real replacement rates.[6] In fact, in 2003 data from the Department of Family and Community Services showed that only 18 per cent of those who are retired were self-funded retirees.[7] Therefore, the Age Pension is still the major form of income support for the majority of those of retirement age and this is expected to be the case for some time into the future.

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[2] Mike Taylor, 'Power in the right hands', *Money Management*, 5 July 2007, 13.

[3] Centrelink,WhoCanGetAgePension,(2008) <http://www.centrelink.gov.au/internet/internet.nsf/payments/qual_how_agepens.htm> at 10 May 2008.

[4] Centrelink, Adjusting Maximum Payment Rates, (2008) http://www.centrelink.gov.au/internet/internet.nsf/payments/pay_cpi.htm at 10 May 2008.

[5] Jon Stanford, 'Long-Term Issues in Superannuation: An Overview' (2004) 37 *The Australian Economic Review* 180, 180.

[6] Ibid.

[7] Department of Family and Community Services, *Inquiries into Retirement and Superannuation*, Occasional Paper no. 11 (2003).

The occupational superannuation component is characterised by compulsion. Employers are required to contribute to superannuation on behalf of most employees at a rate of 9% of the employee's ordinary time earnings. While there is much debate as to whether this rate of contribution is sufficient to adequately fund retirement incomes in the future there is no doubt that at the very least it will reduce the reliance on the Age Pension by those who have had good levels of workforce participation from a young age. There will always be a portion of the community that suffer from lower levels of workforce participation throughout their lifetime for any number of reasons but moving a higher proportion of the ageing community away from Government-funded retirement benefits is expected to be a key outcome of this requirement. In fact, the Government expects that by 2040 only 50% of those who are retired will still be funded by an Age Pension.[8] This rate will gradually increase up to 2020 when the superannuation guarantee amount will be 12%. This is a measure that has been brought in by the Rudd Government in an attempt to address some of these issues. However, it should be noted that this measure is being implemented in direct opposition to the recommendations made by the Henry Review.

The third pillar of the Australia's retirement income system relies on the voluntary provision of private savings and superannuation. There is no real encouragement built into the Australian system to encourage private savings other than a concessional system of superannuation taxation which provides some incentive for those on middle to higher incomes to save through superannuation. By encouraging investment into superannuation rather in some other private capacity the funds are then subject to the preservation requirements which limits the ability to draw on those funds until one of the conditions of release are met. Generally speaking, this will require superannuation savings to be preserved until age 55 although other conditions of release may, in limited circumstances, allow for funds to be paid out earlier.

The focus on superannuation as a key method of encouraging saving for retirement requires there to be a high level of confidence in the ability of superannuation funds to protect the substantial investment in retirement savings. Total estimated superannuation assets have topped the trillion dollar mark and contributions of around $21 billion are made to superannuation funds each quarter.[9] This represents a significant investment by ordinary Australians in saving for retirement which will have the effect of reducing the Government's pension expenditure. Some of the elements of compulsion that characterised the Australian superannuation system have now been rectified. For example, most employees are now able to choose which fund their superannuation is contributed to. However, compulsory superannuation contributions by employers are still the main source of investment in superannuation comprising 65.9% of total contributions.[10] To ensure that these savings are adequately protected a rigorous system of prudential regulation is required. Australia has a system of regulation that has been criticised as being so onerous that it has increased the cost of administration. This is a concern as higher costs will reduce the benefits to members by eroding their account balances. In an ideal world the most influential factor determining account balances would be the performance of investment markets and factors such as management practices of funds would be less

[8] Commonwealth Treasury, *Intergenerational Report 2002-03*, (2003-03).
[9] Australian Prudential Regulation Authority, *Quarterly Superannuation Performance*, December 2007.
[10] Ibid.

significant as adequate regulation will apply to reduce such factors to the level where they will have less of an effect on account balances.

History of regulatory provisions

The regulation of superannuation in Australia has been evolving over time as the reliance on superannuation as an alternate means of retirement income has become more important. While superannuation has been available in Australia since the 19th century, regulation of the superannuation industry is a more recent process that reflects the increasing importance of the industry in the Australian economy. Indeed the industry was virtually self-regulating until the mid-1980's at which time regulation was mostly related to the taxation of superannuation and contained in the *Income Tax Assessment Act.* 1987 saw the introduction of specific legislation targeted at regulating superannuation with the *Occupational and Superannuation Standards Act (and Regulations)* being enacted at this time. Along with this legislation came the establishment of a specific industry regulator in the form of the Insurance and Superannuation Commission (ISC) established under the taxing powers of the Commonwealth Government. The use of the taxing powers of the Commonwealth to establish the regulations has produced a situation where any concessions available to a superannuation fund are reliant on that fund meeting the regulatory requirements to obtain any tax concessions available.[11] This is the situation which still exists today.

Substantial changes to the regulatory provisions came about in 1994 with the enactment of *Superannuation Industry (Supervision) Act 1993* (SISA) and associated regulations. The changes under this legislation resulted in the jurisdiction of the ISC being expanded with increased supervision and regulation of superannuation funds.[12] The duties of trustees and service providers were also codified in the legislation. Civil and criminal penalties were also introduced for those trustees failing in their duties under the Act.

Further changes to the regulatory provisions occurred in 1998 following recommendations arising from the Wallis Report. This resulted in a new regulator, the Australian Prudential Regulation Authority (APRA), being established with responsibility for the entire financial system. Other existing regulatory authorities had some of their responsibilities removed while the ISC and the Australian Securities Commission were abolished. The Australian Securities and Investments Commission (ASIC) was also established as an additional regulatory body to oversee consumer and investor protection and regulation of financial markets. Following these changes the responsibility for regulating superannuation is split between APRA (prudential supervision of funds), ASIC and the Australian Taxation Office.[13]

Following substantial growth in the value of assets managed in the superannuation sector and increasing public concern over some high profile corporate collapses further changes to the regulatory regime occurred in the early 2000's. Critical

[11] Hazel Bateman, 'Regulation of Australian Superannuation' (2003) 36 *The Australian Economic Review* 118, 122.
[12] Ibid.
[13] The Australian Taxation Office is responsible for the supervision of the smaller self-managed superannuation funds.

reviews of the industry added further impetus to these changes.[14] Treasury published an Issues Paper in 2001[15] canvassing options for reform leading to submissions to a Superannuation Working Group giving recommendations for reform. The report from the Superannuation Working Group set out the reform objective as being 'to ensure that the regulatory framework for the superannuation industry is robust and provides adequate levels of safety for the retirement savings of the community'.[16] Changes that occurred pursuant to these recommendations and subsequent consultation were the introduction of a universal licensing regime for trustees of regulated superannuation entities, a mandatory risk management framework for trustees and the funds under trusteeship and operating standards covering fitness and propriety, adequacy of resources and outsourcing.[17]

2007 saw some sweeping changes occur in relation to superannuation with the introduction of a raft of reforms designed to simplify the superannuation regime from 1 July 2007. However, these changes related mainly to the taxation of superannuation benefits and the treatment of contributions. The taxation treatment of the superannuation entities themselves is largely unchanged although these provisions have been rewritten and transferred from the *Income Tax Assessment Act 1936* to the *Income Tax Assessment Act 1997.* These changes, while described as 'the greatest reforms to superannuation in Australia's history',[18] did not significantly affect the regulatory provisions relating to superannuation in Australia.

The current regulatory regime

The regulatory regime that currently governs superannuation funds in Australia is extremely complicated. As discussed, additional layers of regulatory complexity have been added to the regime over time to add to this complexity. This makes compliance with the regime a complicated issue and has led to an increase in the costs of compliance. Increased compliance costs are a major concern to the industry because even small increases in the administrative costs of a superannuation fund can result in a dramatic reduction in the final balance of the fund. This has been illustrated in research by Bateman[19] showing that a 1 per cent increase in the assets administration cost over a 40 year period of retirement saving would result in a 20 per cent reduction in the final retirement benefit. This is a significant reduction in the final retirement balance which will ultimately affect the adequacy of the benefits to fund a lengthy retirement. This is a particular concern for those with low account balances to which

[14] Critical reviews of the superannuation industry came from the Senate Select Committee on Superannuation and Financial Services, Parliament of the Commonwealth of Australia, *Prudential Supervision and Consumer Protection for Superannuation, Banking and Financial Services, Second Report* (2001) and the Productivity Commission, *Review of the Superannuation Industry (Supervision) Act and Certain Other Superannuation Legislation*, Report no 18, (2002).
[15] Australian Treasury, *Options for Improving the Safety of Superannuation, Issues Paper* (2001).
[16] Superannuation Working Group, *Report of the Superannuation Working Group on Options for Improving the Safety of Superannuation* (2002), 10.
[17] Australian Prudential and Regulatory Authority, *A Recent History of Superannuation in Australia*, APRA Insight, Issue Two 2007.
[18] Commonwealth Treasury, Minister for Revenue and the Assistant Treasurer, 'Super Day – Simplified Superannuation Passes the Senate' (Media Release, 27 February 2007).
[19] Hazel Bateman, 'Retirement income strategy in Australia' (2002) 32 *Economic Analysis and Policy* 49.

higher administration costs have a particularly detrimental effect. This is often those with low workforce participation who are already disadvantaged by the operation of a private retirement system as they have not been able to accumulate assets for retirement to enable them to participate effectively in the superannuation system.

The provisions regulating superannuation funds are contained in SISA and the accompanying regulations. This paper will now explore some of the regulatory provisions governing the current regime to assess how they operate to create complexity within the system and whether this complexity is a necessary evil to adequately protect retirement savings and create an environment where Australians can feel secure that their superannuation monies will be available when the time comes to benefit from them.

Fund Operation

The most significant regulation that affects regulated superannuation funds is compliance with the sole purpose test contained in s62 SISA. These provisions require a fund to be maintained solely for one of the core purposes of the Act or for one of the core purposes and one or more of the ancillary purposes. The core purposes relate to the provisions of benefits for the members of funds upon reaching retirement or reaching the age of 65 or provision of benefits upon a member's death. Ancillary purposes are the provision of benefits on termination of employment, the provisions of benefits on cessation of work due to ill health, the provision of death benefits and the provision of other benefits as approved by the Regulator. Additional ancillary benefits that have been approved by APRA are the provision of benefits for the following purposes:

- where benefits are required or permitted under the payment and preservation standards of the *Superannuation Industry (Supervision) Regulations* (SISR) Pt 6
- when a member takes long service leave
- compassionate grounds
- for members of certain superannuation funds affected by the demutualisation of National Mutual Life Association of Australia Ltd and Colonial Mutual Life Assurance Society.

The oft-cited *Swiss Chalet case*[20] illustrates the operation of similar provisions of the *Occupational Superannuation Standards Act 1987* where a superannuation fund purchased, among other things, a Swiss chalet providing funds for the trust fund of one of the fund's members. More recently APRA found the sole purpose test to be breached when the directors of Firezone Protection Services Superannuation Fund used assets of the superannuation fund to secure a loan to provide working capital to the corporate trustee in its capacity as a trading company where the property over which the loan was secured was the major asset of a unit trust held by the superannuation fund.[21]

[20] *Case 43/95*.
[21] Super Review, 'Super fund directors disqualified: Breach of SIS Act prompts action' *Super Review* August 2007, 4.

Contributions which can be accepted by regulated superannuation funds are set out in SISR in reg 7.04. These regulations allow all contributions to be accepted for members under 65 with more restrictive contributions acceptance rules applying to older members. These rules protect the integrity of the superannuation system by reducing the ability to churn contributions through superannuation to take advantage of the concessional tax environment when a member is past the preservation age and should be starting to take benefits out of the system. Recent regulations prevent funds accepting member contributions where no TFN is quoted and apply restrictions on fund-capped contributions. The no TFN regulations allow contributions to be better tracked using the TFN which contributes to the integrity of the system. However, funds are finding that getting members to quote their TFN is not always easy. Restrictions on fund-capped contributions reduce churning of amounts in the concessionally taxed superannuation environment.

Trustees are under obligations to maintain minimum benefits for the benefit of members. Additionally, trustees must ensure that these minimum benefits are maintained until such time as they are able to be cashed by the member or rolled over or transferred as benefits of the member under reg 5.08(1).

Trustees are required to determine the costs that apply to a member account from time to time. Investment returns also need to be determined periodically. Costs and investment returns are required to be distributed in a fair and reasonable manner among all members. Members with small account balances are further protected by provisions preventing administration costs exceeding investment earnings.

Assignment of member's benefits and charges on fund assets will not be allowed unless such assignment and charges are permitted by SIS legislation. Limited charges are allowed under SISR with strict rules in place to manage any associated risk.

Amendments to the governing rules of a superannuation fund will not be allowed where such amendment will have a detrimental effect on member's accrued benefits. However, there are situations in which these rules will not apply where such changes are made pursuant to other legislation, are consented to by the member or the Regulator or where the changes are rectifying mistakes that have been made.

There are a number of rules relating to preservation of benefits set out in the SISR. These rules require trustees to determine which category of benefits a member's benefits belong to and then preserve the benefits accordingly. The categorisation of benefits is only required in relation to pre-July 1999 non-preserved benefits as all contributions and earnings are preserved under the system that was introduced from 1 July 1999.

Most benefits are only able to be accessed once a condition of release specified in SISR Sch 1 is satisfied. The major conditions of release are:

- retirement
- death
- permanent incapacity
- severe financial hardship
- attaining age 65
- attaining preservation age.

Rules relating to portability of benefits are contained in SISR Div 6.4 and 6.5. These rules relate to the roll-over or transfer of member benefits. Generally, for a roll-over to occur the member must give consent or the receiving fund must consent. Portability of benefits has taken on increased importance since 1 July 2004 with members able to request roll-over or transfer of benefits to another fund of the member's choice. Such a roll-over or transfer must occur within the rules contained in Div 6.5. A standard portability form has been introduced from 1 July 2007 which includes standard proof of identity requirements. The standard portability form only applies to requests to transfer the whole amount of a member's benefits. Requests for partial transfer of member benefits may still differ from fund to fund.

Regulations specifying how member benefits are to be paid are contained in SISR Div 6.2. Member benefits can be cashed, rolled over or transferred:

- in accordance with the rules contained in SISR Div 6.3, 6.4 or 6.5, or
- in accordance with the rules contained in SISR Pt 7A where the superannuation interests are subject to a payments split, or
- in accordance with the Family Law (Superannuation) Regulations 2001 reg 14G or 14N where the trustee pays, creates, transfers or rolls over a superannuation interest in satisfaction of a non-member spouse interest on marriage breakdown.

One of the most important discretions to be exercised by a trustee is in relation to the payment of death benefits to the beneficiaries or the estate of a deceased member. Members are able to make a non-binding death nomination to assist the trustee in exercising this discretion. However, the trustee is still able to exercise their discretion in light of all available circumstances at the time of death. Some funds may allow members to make a binding death nomination which requires the trustee to pay the member benefits to those nominated. Such a notice will only be binding on the trustee if stringent conditions are met.

Trustees are also under subject to regulations governing the provision of information to members. These regulations are largely contained in the Corporations Act and Corporations Regulations although SISR still contains some residual disclosure provisions. Dealing with member inquiries is dealt with in s101 SISA requiring trustees to take reasonable steps to ensure that there are arrangements in place to allow members to make inquiries or complaints where required.

There are a number of reporting requirements imposed on trustees under the SIS legislation in including reporting of:

- annual and periodic returns
- lodgement of auditor's reports
- significant adverse events
- change in fund status, and
- any other information requested by the Regulator.

Additional reporting requirements arise under the Superannuation Reporting Standards[22] which require reporting by registrable superannuation entities information in relation to their financial performance, financial position, directly held investments, derivative financial instruments, exposure concentrations, transaction with related parties, profile of fund membership and of the entity, and a trustee statement. Failure to comply with the reporting standards may lead to a fine of up to 50 penalty units as breach of a strict liability provision. A breach may also lead to issuance of an infringement notice by APRA. APRA may impose an administrative penalty in lieu of an offence. Reporting is required in electronic form using the Direct to APRA (D2A) software.

Strict financial management standards apply[23] covering the circumstances in which a fund is considered to be in an unsatisfactory financial position and the requirement for maintaining and monitoring the solvency of a fund. If a fund is considered to be in an unsatisfactory financial position the auditor or actuary is obliged to report the situation to the trustee. The trustee is then required to take remedial action. The solvency of a fund will be determined differently depending on whether the fund is a defined benefit fund or an accumulation fund.

Additional administrative obligations are also set out in SISA relating to appropriate maintenance and retention of records relating to the fund, seeking information from an investment manager so as to determine the investment manager's capability and appointing investment managers. Failure to meet the obligations in relation to correct record-keeping is a strict liability offence. Where such failure occurs with intention to deceive, mislead or provide false and misleading information this will constitute a criminal offence.

Payments to a current or former employer-sponsor are strictly governed and subject to a number of conditions. However, these conditions are subject to the discretion of APRA and can be waived. In addition to the conditions imposed by SISA general trust law provisions may apply. Case law precedents have indicated a number of issues with return of surpluses being ruled invalid. Therefore trustees need to be wary when considering a return of surplus to standard employer-sponsors.

A trustee is under a number of obligations concerning compliance with the superannuation splitting provisions allowed under the Family Law Act 1975 PtVIIIB. There are obligations in relation to the provision of information about the interests that are subject to a split. Trustees have a number of options available to them under SISR Div 7A.1A and Div 7A.2 clarifying different situations that occur under the superannuation splitting provisions. SISR Div 7A.3 further outlines the obligations for non-member spouse entitlements and SISR Div 7A.4 clarifies the creation of new interest for the non-member spouse. While these provisions allow greater equity in the treatment of assets accumulated privately with assets accumulated within the superannuation environment for separating couples they add further work to the already onerous requirements on superannuation funds.

[22] These powers have been determined by APRA under the *Financial Sector (Collection of Data) Act 2001*.
[23] *Superannuation Industry (Supervision) Regulations* reg 9.01 to 9.45.

Unclaimed superannuation benefits and lost members are a continuing problem within the Australian superannuation system. In fact, there is $11.9 billion in lost superannuation accounts.[24] Thus, stringent regulations are in place to direct trustees to deal with unclaimed money and lost members.

The regulations governing fund operation are substantial and can be onerous to comply with. In particular, regulations involving the reporting requirements involve the collection of substantial data which, in some cases, appears not to be utilised in any meaningful way. These regulations could be eased significantly without having any real effect on the actual operation of superannuation funds. This may go some way towards reducing the costs of compliance without any subsequent reduction in the overall safety of superannuation savings.

Pension Standards

Minimum standards are in place for complying income streams. Compliance with these minimum standards must occur to enable taxation as a superannuation stream benefit. The minimum standards are contained in SISR reg 1.05(11A) and 1.06(9A). Minimum payments amounts are also specified in Schedule 7.

Investment Rules

There are four overriding principles which dictate the investment activities of a fund.[25] The trustee must keep these principles in mind at all times. They are the sole purpose test, the fund's investment strategy, the arm's length rule and the general trustee covenants. In addition to keeping these broad principles in mind the trustee must also abide by the specific regulations dealing with particular investments and investment controls. Regulations dictate the elements to be considered when formulating an investment strategy and when reviewing the fund's investment strategy. A deeming provision exists to deem the governing rules of an entity to contain a covenant requiring the trustee to formulate and give effect to an investment strategy in identical terms to those set out in the regulations. Non-compliance with such a covenant may give rise to a civil liability action where the non-compliance is not reckless or intentional. However, acts of recklessness or intentional non-compliance will give rise to an offence punishable by a fine. Other more general investment controls also exist in SISA as well as specific guidelines issued by the Regulator in relation to particular investments.

As a general rule superannuation funds are prohibited from borrowing. Superannuation funds are only able to borrow money in limited circumstances on a short-term basis. A limited exception to the general rule that prohibits borrowing by superannuation funds exists for investments in instalment warrants. Limitations also apply to the lending of money or financial assistance to fund members or relatives of fund members.

Restrictions apply to acquisition of members assets with acquisitions allowed only in limited circumstances generally requiring that the transaction occur at market value.

[24] Minister for Superannuation and Corporate Law, 'Labor To Act on Lost Super' (Press Release, 20 December 2007).
[25] CCH Australia Limited, *Australian Master Superannuation Guide 11th edition* (2008) 128.

Related to these restrictions are those requiring that transactions occur at arm's length or on terms and conditions that would apply if the transaction was at arm's length. These restrictions operate to prevent misuse of fund assets by the conduct of round-robin arrangements with members and others who are related to the fund. While this has particular application with smaller funds where all fund members are related it also prevents the trustees of larger public funds from engaging in non-arm's length transactions that may not be in the best interests of all members of the fund.

Stringent restrictions are placed on investment in in-house assets[26] imposing a maximum limit on investments with a requirement that where this maximum limit is breached a written plan must be entered into to facilitate disposal of excess in-house assets and no further acquisitions of in-house assets will be allowed. These restrictions also prohibit a superannuation fund from entering into any scheme that would avoid the application of the in-house asset rules.

It is prohibited to offer inducements to employers, or in fact, to refuse to offer goods and services to employers, in return for employers arranging for employees to be members of the fund. These provisions are particularly important given that employees can choose which fund their superannuation contributions are paid into and may be easily persuaded by their employer to choose a particular fund when they are looking for guidance as to which fund to choose.

The relatively light level of regulation surrounding the investments that can be made in superannuation belie the importance of this element of superannuation savings. The returns from superannuation funds are the biggest factor affecting the final balance of the funds and yet there are relatively few rules dictating conduct in this area. Perhaps, if further changes are to be made in the regulation of superannuation additional guidelines as to investment should be considered.

Registrable Superannuation Entity Licensing and Registration

Major reforms to the landscape of superannuation regulation occurred in 2004 with the introduction of a licensing regime for trustees and the requirement for registration of registrable superannuation entities (RSE). Subject to these provisions corporate trustees and groups of individual trustees are required to obtain an RSE licence. A risk management strategy is required to fulfil the requirements of licensing. These reforms also require registration of a registrable superannuation entity. While registration is free preparation of a risk management plan is required prior to registration. Apart from the actual cost of the licences required it is the preparation of this risk management strategy and the risk management plans that has contributed significantly to the costs of implementation of the licensing regime.[27] The Association of Superannuation Funds Australia estimates the cost of implementing the licensing regime at $35 - $70 million across the industry.[28] The introduction of the licensing regime has seen some rationalisation in the superannuation industry with many funds assessing the cost of licensing to be too high and winding up and transferring their benefits into larger funds. This has resulted in increased

[26] Sections 69 to 85 *Superannuation Industry (Supervision) Act 1993*.
[27] Zilla Efrat, 'Put to the Test' (August 2005) *SuperFunds* 41, 42.
[28] Association of Superannuation Funds of Australia Limited, ASFA Submission to Taskforce on Reducing the Regulatory Burden on Business (December 2005), 2.

professionalism in the industry. However, it does reduce the number of funds across which the APRA levies can be distributed and may result in higher levies on the remaining funds. The ongoing monitoring of the risk management plan will also contribute to higher ongoing compliance costs as assessment of the risk management plan is being undertaken in conjunction with the fund audit. This has contributed to a 50% increase in audit fees[29] which will again impact on the end balance of the fund's members.

Conclusion

There are many layers of complexity that need to be negotiated in the administration of superannuation funds. The regulations put in place by SISA and the associated regulations are many and varied and cover a wide spectrum of the work completed by funds. There is some debate as to whether this work is necessary to adequately safeguard the retirement income of the Australian population. Many of the provisions in place represent good practice and may be put in place by trustees regardless of a legislative compulsion to do so. Indeed, many of the provisions simply legislate what would appear to be common sense. However, there is no doubt that many of the regulatory requirements could be better done without. On the balance, while there are legitimate concerns about the compliance costs it appears that the heavy level of regulation is required to provide some level of confidence within the public that their retirement savings are adequately protected. The consequent increase in compliance costs is a valid industry concern. However, the current economies of scale that are being achieved within the industry following the recent consolidations may contain those costs so that they have less of an effect on the long term outcome of superannuation savings.

[29] Efrat, above n 26, 42.

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