



ACTU SUPERANNUATION TRUSTEES NETWORK NEWSLETTER
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Super Web Site

Superannuation is an important achievement of the ACTU and unions and an issue that affects most working Australians. The ACTU is committed to raising public awareness of superannuation issues and has developed a new website devoted entirely to superannuation.

'Unions & Super' is a website tailored towards union organisers, industrial officers, delegates, members and other interested parties. The primary purpose of this site is to promote industry super, to inform people about the ACTU's views on superannuation issues and to inform and educate. The Unions & Super website can be found at www.actu.asn.au/super.

From July 1 with superannuation once again thrust into the public eye, many people will be looking for more information and resources about superannuation. Unions & Super provides a wealth of information including:

- Employees' entitlements to superannuation;
- Information about choice of fund;
- The inadequacy of many employees' retirement incomes;
- ACTU policy and submissions on super and corporate governance;
- A history of super in Australia;
- Resources and materials to download;
- Links to major industry funds and partner organisations Superpartners, Members Equity, AUSfund and IFFP.

Unions & Super is a website designed for Australian workers and the people who represent them. To ensure that all the important issues are covered and questions are answered, feedback and contributions are most welcome.

They can be made through the feedback form on the website or by emailing kvelcek@actu.asn.au directly.

Super Cadets to fly again!!

CMSF, in conjunction with the ACTU and AI Group are reprising the Super Cadets program in 2006.

Expressions of interest have been sought from industry and public sector funds and at the time of writing it is expected there could be up to thirty cadets nationally. This is up from twenty in 2004. There will be cadets in Melbourne, Sydney, Adelaide, Brisbane and Canberra.

The purpose of Super Cadets is to develop the next generation of industry and public sector fund leaders from within our own ranks.

The one year cadetship includes four weeks classroom training that focuses on the history and purpose of industry super and the importance of workplace distribution. The role of unions and employers is a critical element of the training.

As in 2004, we will be asking unions to advertise the program to their members and activists.

For further information please contact David Whiteley on 03 9664 7378.

The logo for Super Cadets. 'SUPER' is in a large, bold, italicized sans-serif font. 'CADETS' is in a smaller, bold, italicized sans-serif font below it.

ACSI Corporate Governance Conference

The Fourth Annual Conference of the Australian Council of Super Investors (ACSI) was held in Melbourne on June 8, 2005. The theme of this year's conference was "Finding the balance - managing risk, returns, reputation and responsibility."

As one of the presenters, Professor Ian Ramsay pointed out the Conference was timely given the Federal Government's Inquiry into directors' duties which has been referred to the Corporations and Markets Advisory Committee (CAMAC). A central theme of the inquiry and the ACSI conference is whether and to what extent the Corporations Act should require directors to take into account the interests of specific classes of stakeholders or the broader community.

This theme of corporate social responsibility (CSR) has been taken up by several global governance projects that are seeking to "mainstream responsible investment." This includes the Global Corporate Citizenship Initiative of the World Economic Forum and the Principals for Responsible Investment Project sponsored through the United Nations Global Compact and Environment Program. The bottom line essentially involves getting companies and investors to take into account the impact of their behaviour or investments on the wider society and the natural environment.

The ACSI conference was provided with some preliminary findings of the CSR research project prepared for ACSI by the Australian Centre for Corporate Social Responsibility and Monash Sustainability Enterprises. This included a review of the different meanings attached to CSR and the perception of the issues it raises for super funds and advisors. The main messages from the preliminary research include:

- CSR issues are becoming more material;
- The risk management perspective of CSR is the main focus of investors and their advisors;
- There are significant measurement problems associated with assessing risks, opportunities and long term costs/benefits;
- There was increasing recognition of the potential social/environmental impacts of the behaviour of companies super funds invest in. However, the criteria for trustees to take CSR into account on specific issues was

problematic as was its relationship to traditional views of fiduciary responsibility.

These messages were evident in a number of ACSI conference presentations. Brian Harwood, the Chairman of Oil Search Limited explained the need for his company to meet the expectations of the local communities they operate in, be it in PNG or Yemen.

Caroline Hewson traced the evolution of Westpac's approach to CSR since the late 1990's and the impact of community expectations on the bank. Meredith Hellicar explained the CSR lessons from the perspective of a company director on the board of James Hardie. Trish Donohue explained how CSR and governance issues generally were handled by a sub-committee of the Cbus board.

The strong moral underpinnings of CSR issues were reinforced in presentations from the Rev. Tim Costello (in relation to Australia's response to the tsunami appeal) and Greg Combet in terms of the James Hardie case.

At the end of the day as Combet expressed it, a company's corporate culture has a lot to do with whether it does the right thing in meeting the legitimate expectations of stakeholders. As Justice Owen said in his report on the HIH case:

"From time to time as I listened to the evidence about specific transactions or decisions, I found myself asking rhetorically: did anyone stand back and ask themselves the simple question -- is this right? Right and wrong are moral concepts and morality does not exist in a vacuum. I think all those who participate in the direction and management of public companies, as well as their professional advisors, need to identify and examine what they regard as the basic moral underpinnings of their system of values."

Perhaps the final word on the CSR issue was given in one of the first presentations at the conference. STA's CEO Mark Delaney, referred to a CFA sponsored study by the corporate governance expert Jean-Paul Page. As that author explained:

"Corporate governance begins with power – who holds the power in an organization, how is it delegated and exercised, its purpose and what control mechanisms the power holders use.... In public corporations the purpose of power

is the creation of value, and the structure of shareholders owned corporations means that the value created must be shared. **Therefore a comprehensive definition of corporate governance will cover all the activities involved in creating and sharing value...** A company with a good corporate governance system can strike a balance between the ultimate power held by the shareholders, the fiduciary role exercised by the board of directors, the authority managers have to allocate resources and the rights stakeholders enjoy. The "more calibrated" the balance, the better the decision making and the more efficient the resource allocation – which leads to value creation"

Inevitably this means corporate governance and CSR for trustees is complex, time consuming with a range of issues that are difficult to quantify and often involve subjective judgments. This is the case even when an agreed "value creation" framework anchors decision making in the traditional fiduciary role trustees are most familiar and comfortable with.

Corporate Governance in the United States

Righting the wrongs of the last wave of corporate fraud in America continued in June as a jury convicted former Tyco International CEO, Dennis Swartz on 22 of 23 charges including fraud, conspiracy and grand larceny. As reported by CNN Money:

"Kozlowski 58 and Swartz 44 were accused of taking bonuses worth more than \$120 million without the approval of Tyco's directors, abusing an employee loan program and misrepresenting the company's financial condition to investors to boost the stock price while selling \$575 million in stock".

In many respects the trial symbolized the culture of corporate greed that afflicted companies such as Tyco, Enron and World-Com. It also sets the stage for the trial early next year of Ken Lay and Jeffrey Shilling of Enron.

In another development reported in the June edition of The Lawyer.com the giant American retailer Wal-Mart is under increasing criticism by large stakeholders on its corporate governance practices.

A group holding more than 11 million Wal-Mart shares (including UK institutional Investors FtC

Asset Management, the UK University Superannuation Scheme and the pension funds of NY and Illinois) have written to the company calling on it to establish an independent committee to review Wal-Mart's legal and regulatory controls.

Amongst other things the letter states:

"As long term investors and shareholders in Wal-Mart we are deeply concerned that the frequency of reports exposing legal and regulatory non compliance at the company could be indicative of inadequate internal controls and a lack of board oversight and accountability.... As shareholders we are deeply concerned about potential contingent liabilities and negative effects on the company's stock price and reputation".

The letter follows reports by an alleged whistleblower who claimed some \$500,000 of the company's expense account funds were used by Wal-Mart's former Vice Chairman over a 5 year period for illegal anti union activities.

"The letter includes a raft of examples of non-compliance including concerns over exploitation of illegal immigrants, and violations of child labour laws. The supermarket chain has also become embroiled in the largest civil rights action ever brought against a private employer in the U.S. last year, a US Federal Court certified a national class action sex discrimination law suit on behalf of over 1.5 million current and former female Wal-Mart employees. The suit alleges Wal-Mart discriminates against women and retaliates against those who complain about their treatment." (Source: The Lawyer.com, June 20 2005).

Government Inquiries into Super related Issues

There are three current government inquiries into Superannuation related issues.

The first is being conducted by the House of Representatives Economics Committee. Its focus is on Improving Superannuation savings of people under age 40. The inquiry will focus specifically on:

- Barriers and/or disincentives to contribute to Superannuation;
- Current incentives in place to encourage voluntary superannuation contributions;

- Improving their awareness of saving early for their retirement.

The deadline for submissions is 22 July 2005. Information about preparing submissions is available at

www.aph.gov.au/house/committee/efpa. The ACTU submission is being co-ordinated by Nixon Apple. Anyone wishing to provide some input to that submission can contact Nixon on 03 9664 7324 or by email napple@actu.asn.au.

The second inquiry deals with Corporate Responsibility, a theme canvassed extensively at this years ACSI Conference. It is being conducted by the Parliamentary Joint Committee on Corporations and Financial Services.

The Committee will inquire into Corporate Responsibility and Triple-Bottom-Line reporting, for incorporated entities in Australia, with particular reference to:

- a) The extent to which organisational decision-makers have an existing regard for the interests of stakeholders other than shareholders, and the broader community;
- b) The extent to which organisational decision-makers should have regard for the interests of stakeholders other than shareholders, and the broader community;
- c) The extent to which the current legal framework governing directors' duties encourages or discourages them from having regard for the interests stakeholders other than shareholders, and the broader community;
- d) Whether revisions to the legal framework, particularly to the Corporations Act, are required to enable or encourage incorporated entities or directors to have regard for the interests of stakeholders other than shareholders, and the broader community. In considering this matter, the committee will also have regard to obligations that exist in laws other than the Corporations Act;
- e) Any alternative mechanisms, including voluntary measures that may enhance consideration of stakeholder interests by incorporated entities and/or their directors;
- f) The appropriateness of reporting requirements associated with these issues;

- g) Whether regulatory, legislative or other policy approaches in other countries could be adopted or adapted for Australia.

Submissions need to be made by mid September 2005. The Committee Website is www.aph.gov.au/senate/committee/corporations_ctte/corporate_responsibility/index.htm.

The third Government inquiry may influence the future direction of Superannuation investment in private equity, particularly venture capital. The Venture Capital Review was announced in the May 2005 budget. Submissions to this inquiry closed in late June and details of the terms of reference can be found at www.industry.gov.au/venturecapital.

In Australia, venture capital is best defined as investments at the seed - start-up and early expansion stage. In the ACTU's assessment the inquiry is likely to conclude that private equity investment for later stage expansion and buyout deals is well supported. However, relative to North America and Europe, Australia is significantly under investing in venture capital at the seed – start-up and early expansion phase.

The available information suggests:

- Over the seven years 1996–2002 Australia's investment in seed – start-up and early expansion venture capital was less than half (as a % of GDP) of what was invested in leading nations in North America and Europe;
- The venture capital market is well developed in the United States but embryonic in Australia, particularly in terms of venture capital partnerships that super funds can invest in. This is reflected in the fact that investment in a typical private equity fund of funds vehicle in the U.S gives the investor an exposure to venture capital of about 35% of funds invested compared to 15% in an Australian Fund of Fund Vehicle investing in private equity in Australia;
- Poor returns from venture capital investment in Australia (relative to the risk) and the underdeveloped manager base suggests that for the foreseeable future Australian super funds are more likely to invest in private equity expansion and buy out deals.

These developments are despite the fact that the federal government has attempted to provide incentives to encourage venture capital investment such as the Innovation Investment and Pre Seed Funds.

Clearly the venture capital investment needed to grow an Australian biotechnology industry and a new generation of fast growing start-up technology companies like ResMed and Cochlear is important.

Australia's value added services and manufacturing industry are facing increasing competitive pressures in the global economy. We are being squeezed between high tech Japan, Europe and North America on the one hand, and low cost Asia on the other hand. To reposition our export and import competing firms in the global economy we need to move higher up the value added chain where we can build more sustainable competitive advantages around high wage/high skill human capital supported by world class social and economic infrastructure.

But we have been under investing in the things that can help make this happen including research and development as well as venture capital. As Greg Combet pointed out in his interview with Super News:

"Since 1996 business investment in research and development has been growing in real terms by 2.6% per annum. In the previous decade it was growing by 11.4% per annum.

In the decade to 2015, 3% annual growth in business R&D gives us \$73 billion of R&D while 10 % growth gives us \$111 billion. That is a difference of \$38 billion and we need that additional R&D growth to reposition Australia in the global economy higher up the value added chain where we will have more sustainable competitive advantages.

Without that extra \$38 billion the consequences are again clear – continuing slow growth in high value manufacture and services exports, underperformance in the generation of high wage/high skill jobs and slower productivity growth in the tradeables sector."

Similarly we need to invest significantly more in venture capital to commercialise that additional R&D and significantly increase the pipeline of emerging knowledge intensive businesses with their core value added activities anchored here in Australia as they go global.

But at this stage it would appear that there is too much risk and too much uncertainty about returns for investors and an inadequate manager base of venture capital partnerships to invest in. There are also some challenging issues to be addressed concerning the supply of appropriate and experienced start-up

management capability including international marketing expertise.

The ACTU worked with the Committee of Melbourne who made a submission to the inquiry. We are also working with IFM to see if the industry fund movement can help build the manager base required for higher levels of venture capital investment.

Effects of the proposed IR legislation on super contributions

The removal of superannuation as an allowable matter from federal awards will mean that the SG Contribution is paid on ordinary time as defined in the SGAct.

For most employees the definition of "ordinary time earnings" for the purpose of SGC in relation to an employee, means the total of earnings in respect of ordinary hours of work (excluding certain lump sums) earnings consisting of over-award payments, shift-loading or commission.

In certain circumstances, where employers were already contributing to a fund on Budget night 1991 (20 August), they may use the earnings base specified in that fund. In some cases this results in employees receiving lower contributions than they otherwise would, although this anomaly is due to be removed by 2008.

In some awards the definition of ordinary time earnings used for the purposes of calculating superannuation is superior to the SGAct, and removal of the award clause will lead to many workers receiving lower superannuation contributions.

The ACTU is seeking examples where:

- The removal of superannuation clauses from an award would reduce super contribution because of the difference in definition of OTE between the award and SG legislation; and
- The quantum of this difference on a weekly or fortnightly basis.

Please note we also need to know where workers will be better off under the SG legislation.

Our intention is to undertake some modelling and demonstrate the effect of reducing super contributions over a 25 to 30 year working life and highlight the effects of the proposed legislation on retirement incomes.

We would like to collate this information by Friday 5 August.

Please contact David Whiteley or Cath Bowtell of the ACTU on 03 9663 5266 for more information.

Choice and Bargaining

An issue has arisen regarding whether an EBA entered in to after 1 July can over-ride the choice that an employee has exercised in respect of their superannuation contribution.

It seems clear that where an EBA specifies a fund, an employer will be in breach of the EBA if it contributes to another fund. This will be the case regardless of when the EBA was entered (i.e. even if it was entered into after the exercise of choice by an employee).

Section 32C(6) of the SGA Act is not limited to circumstances where EBAs are entered into before an employee has chosen a fund.

A question has arisen over the effect of the proposed *WR Amendment (Better Bargaining) Bill 2005* which will, if enacted, prohibit protected industrial action during the life of an EBA. Unions considering making single issue EBAs around superannuation should try negotiate agreements of short duration (say 3 months). This will ensure that bargaining (including protected action) is possible after the expiry of the agreement. Meanwhile the agreement will continue in force beyond its nominal expiry date.