



The Hon Bill Shorten MP  
Minister for Financial Services & Superannuation  
PO Box 6022  
House of Representatives  
Parliament House  
Canberra ACT 2600

26 October 2012

Via email: [melissa.bray@treasury.gov.au](mailto:melissa.bray@treasury.gov.au)

PRINCIPAL MEMBERS



Dear Minister,

ACI would like to take the opportunity to thank you and Treasury for providing an opportunity for us to comment upon the exposure draft of the Superannuation Legislation Amendment (Further Measures) Bill 2012.

ACI is the peak industry body for the practice of compliance, risk and governance in the Asia Pacific region. Our members are compliance, risk and governance professionals who are actively engaged in the private, professional services and Government sectors.

Our submission will focus upon the inconsistent treatment of professionals that service the superannuation industry and the requirements that have been established for some professionals to execute their responsibilities while others have not been given the same professional recognition or guidance.

ACI supports the broadening of the risk management systems required to be established by regulated entities to include both RSE and non RSE risks under Schedule 1, item 5, paragraph 912A(1)(h) and item 6, subsections 912A(5) and (6). We note however that both the Corporations Act and these proposed amendments remain silent on the skill set that should be required for the individual(s) who will be responsible for undertaking such an essential component of the superannuation fund's operations.

To date ACI has not undertaken a process of identifying the skills that are necessary for an individual to be able to exhibit in order to demonstrate their capability to successfully fulfill a risk management position at various levels of

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seniority. ACI would be pleased to undertake this work in conjunction with Treasury in order to facilitate this outcome. ACI has however undertaken this analysis in relation to compliance professionals, which represents one type of risk (regulatory) risk faced by RSEs. A copy of this analysis has been attached to this submission.

In comparison, the exposure draft proposes that “The Chair of APRA will determine which APRA staff members will have the power to issue infringement notices. Where they are determined by class, the Chair must be satisfied that persons of that class have suitable training or experience to properly exercise the powers of an infringement officer.” (Schedule 1, item 109, sections 223B and 223C).

What is clear, is that Treasury, via APRA wish to ensure that those individuals charged with the responsibility of issuing infringement notices on behalf of APRA will do so that minimises the risk of error occurring as they will have the skills and knowledge necessary to execute their role in a satisfactory fashion.

This is again in contrast to the Corporations Act that specifies that those providing financial advice are “...adequately trained, and are competent...” section 912A(1)(f).

Additionally the exposure draft proposes to allow APRA to make prudential standards that determine “...the eligibility criteria for, and functions and duties of, auditors and actuaries in the prudential standards.” (See Chapter 6 of the exposure draft). Here is yet another example of the need for one group of professionals to be able to demonstrate a set of professional criteria and standards, whereas this requirement does not exist for risk and compliance professionals, therefore resulting in the potential employment of individuals who are not qualified or capable of undertaking the risk and compliance management tasks that have been established under both the Act and the proposed amendments.

This inconsistency is even more curious when one considers the nature of the roles undertaken by compliance and risk professionals verses that of auditors. The compliance and risk professional undertake a forward looking preventive role to ensure risk acceptable appetites are established, risks are identified and mitigated and that regulatory requirements are adhered to. That way protecting members’ funds as well as the overall stability of the superannuation industry.

By contrast, the auditor reviews past performance to ensure compliance with internal and external requirements has occurred, identifies areas of improvement in areas where breaches or near breaches have occurred and then works with the compliance team to implement business improvement processes to prevent future re-occurrences.

The professionals engaged in the preventative aspects of a firm's governance risk and compliance structure have no existing criteria for their appointment. However, the professionals that undertake a retrospective function, be it reviewing or punishing past behaviours and business practices will have an "eligibility criteria" established before they can commence their roles.

ACI believes that this approach fails the "common sense test" and therefore calls upon the Minister to reconsider this approach by allowing APRA to establish by way of prudential standard an eligibility criteria for those professionals who are charged with the responsibility of establishing and maintaining the risk and compliance frameworks of superannuation firms.

Once again ACI would like to thank Treasury for providing an opportunity for ACI to make a submission on the exposure draft of the Superannuation Legislation Amendment (Further Measures) Bill 2012. Should you require any additional information or seek clarification on the comments that appear in this submission please do not hesitate to contact ACI on +612 9290 1788.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'M. Tolar', with a stylized flourish extending to the right.

**Martin Tolar CCP**

**Managing Director**

*Please note that the views expressed in this submission represent those of the collective ACI membership. Consequently, individual members and organisations may hold a different perspective on some of the points raised and therefore reserve the right to make comment in their own right.*

Table 1: Compliance Professional Capabilities

	Pre- Management*	Management**	Senior Management***
Generic Skills			
Skill Transfer Training	✓	✓	✓
Communications Programs	✓	✓	✓
Assertiveness	✓	✓	✓
Leadership and Team Building	✓	✓	✓
Negotiation, Influencing, Facilitation and Mediation		✓	✓
Creative Problem Solving		✓	✓
Business Process			
Changes Leadership & Organizational Behavior	✓	✓	✓
Project Management	✓	✓	✓
Performance Management & Analysis	✓	✓	✓
Investigatory: Forensic Review & Monitoring	✓	✓	✓
Quality Processes and Systems		✓	✓
Information Management Systems & Reporting		✓	✓
Internal auditing and general monitoring		✓	✓
Business Planning, Budgeting and Reporting		✓	✓
Generic Compliance			
Compliance Framework, Planning & Implementation	✓	✓	✓
Risk Management Frameworks including fraud	✓	✓	✓
Corporate Governance Frameworks	✓	✓	✓
Ethics and Social Responsibility	✓	✓	✓

Breach Identification Management & Escalation Processes		✓	✓
Complaints Handling Processes		✓	✓
Compliance Policy Development & Regulatory Relationships			✓
Due Diligence Processes			✓
Whistleblower Systems			✓
Compliance Training Programs			✓
<b>Legal Compliance</b>			
Law for Non Lawyers	✓	✓	✓
Privacy, Anti-Trust, Consumer Protection, Corporations Act.		✓	✓
Criminal Code, Anti-Money Laundering			✓
			✓