

**The Law
Reform
Commission**

Report No 59

**The Companies
and Securities
Advisory Committee**

Report

**COLLECTIVE INVESTMENTS:
SUPERANNUATION**

**This Report
reflects the law
as at 31 March 1992**

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The Law Reform Commission was established by the *Law Reform Commission Act 1973*, section 5, to review, modernise and simplify the law. It started operation in 1975. The office of the Commission is at 99 Elizabeth Street, Sydney, NSW, Australia (tel (02) 231 1733; fax (02) 223 1203).

The Companies and Securities Advisory Committee was established by the *Australian Securities Commission Act 1989* to monitor and advise on the operation of national scheme laws. It started operation in 1989. The office of the Committee is at 4 Bligh Street, Sydney, NSW, Australia (tel (02) 221 1988; fax (02) 223 4296).

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Terms of reference

COMMONWEALTH OF AUSTRALIA

Law Reform Commission Act 1973
Australian Securities Commission Act 1989

1. I, Michael Duffy, Attorney-General of Australia noting:

- the report of the Companies and Securities Law Review Committee to the Ministerial Council for Companies and Securities titled 'Prescribed Interests'; and
- the need to ensure that there is a proper legal framework for prescribed interests and like collective investment schemes (collective investment schemes) that:
 - promotes commercial stability, and efficiency in capital raising and capital formation; and
 - provides an appropriate level of regulation that adequately and effectively protects the interest of investors,

refer to the Law Reform Commission for review and report under the *Law Reform Commission Act 1973* section 6:

- (1) Whether the present legal framework for collective investment schemes provides for the most efficient and effective legal framework for the operation of the various kinds of such schemes and, in particular, whether a different operating structure should be provided for such schemes, including whether separate structures should apply to different kinds of schemes;
- (2) Whether there is a proper level of regulation of the various kinds of collective investment schemes, and in particular:
 - whether different systems of regulation should be provided for different kinds of such schemes;
 - what disclosures should be made to the public;
 - whether scheme documents, such as trust deeds, can be simplified or standardised;
 - what should be the powers, duties and responsibilities of the persons who promote, manage, or supervise the operation of collective investment schemes, such as managers and trustees, including whether, and the extent to which, such duties and responsibilities should be codified;
 - whether any form of self-regulation would be appropriate;
 - what prudential requirements, if any, should be imposed on such persons as promoters, managers or trustees of such schemes, including requirements as to availability of capital;
 - whether a special framework for the liquidity of collective investment schemes, and for the secondary sale or trading of collective investment scheme interests, is desirable, including whether buy-back arrangements are appropriate and, if so, whether there is a need for particular buy-back provisions for particular kinds of such schemes; and

(3) any related matter;
and, under the *Australian Securities Commission Act 1989* section 148, request the Companies and Securities Advisory Committee to advise me about those matters.

2. In carrying out their functions, the Commission and the Committee are to consult the Australian Securities Commission, the Commonwealth Attorney-General's Department, relevant Commonwealth, State, and Territory authorities, the securities industry and any other person or body they think appropriate, having special regard to the Commonwealth's Access and Equity policy.

3. The report and advice should include draft legislation and an explanatory memorandum.

4. The report is to be delivered by 1 November 1992.

DATED: 24 May 1991

Michael Duffy
Attorney-General

Participants

Australian Law Reform Commission

The Division of the Commission for the purpose of this report comprised:

President

Justice Elizabeth Evatt AO

Deputy President

John Greenwell

Members

Jim Armitage (from 22 October 1991)

Leigh Hall (from 12 December 1991)¹

Stephen Mason (from 27 February 1992)

The Companies and Securities Advisory Committee

Convenor

Mr Mark Burrows

Members

Mr Don Argus

Mr John Barner

Mr Reg Barrett

Professor Philip Brown

Mr David Crawford

Mr Kevin Driscoll CBE

Mr William Gurry

Mr Tony Hartnell

Mr Wayne Lonergan

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Russell Agnew

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Margaret Ryan

Secretary and Director of Research

Stephen Mason (to 26 February 1992)

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1. Mr Hall is also a member of the Advisory Committee.
 2. By agreement, the ALRC project team had responsibility for preparing this report.

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Mark Blair

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Vincent Jewell (from 17 February 1992)

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Mr David Davis, Managing Director, Permanent Trustee Company

Mr John Denyer, Executive Director, Investment Funds Association of Australia

3. The recommendations, statements of opinion and conclusions in this report are those of the members of the ALRC and the Advisory Committee. They do not necessarily represent the views of consultants or of the organisations with which they are associated.

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Summary of abbreviations

ACTU	Australian Council of Trade Unions
ADF	Approved deposit fund
Advisory Committee	Companies and Securities Advisory Committee
AFIC	Australian Financial Institutions Commission. A body proposed to be established under co-operative legislation to oversight the prudential regulation of NBFIs under State and Territory law
ALRC	Australian Law Reform Commission
ASFA	Association of Superannuation Funds of Australia
ASIFA	Australian Society of Investment and Financial Advisers
ASC	Australian Securities Commission
ASX	Australian Stock Exchange Limited
ATO	Australian Taxation Office
CSLRC	Companies and Securities Law Review Committee established under the <i>Companies Act 1981</i> (Cth) (now abolished and replaced by the Advisory Committee)
Corporations Law	The Corporations Law, set out in the <i>Corporations Act 1989</i> (Cth) s 82
DA	Deferred annuity
DSS	Department of Social Security
DTI	Deposit taking institution (principally banks, building societies and credit unions)
EC	European Community
ERISA	<i>Employee Retirement Income Security Act 1974</i> (US)
ETP	Eligible termination payment
GDP	Gross domestic product
IAFP	International Association of Financial Planners
IFA	Investment Funds Association of Australia (formerly the UTAA)
IOSCO	International Organisation of Securities Commissions
IRC	Industrial Relations Commission
ISC	Insurance and Superannuation Commission
ISRO	Industry self regulating organisation
ITAA	<i>Income Tax Assessment Act 1936</i> (Cth)
LIA	<i>Life Insurance Act 1945</i> (Cth)
LIFA	Life Insurance Federation of Australia
National Mutual	National Mutual Life Association of Australasia Limited
NBFI	Non-bank financial institution
NCA	National Crime Authority
NWC	National wage case

OECD	Organisation for Economic Co-operation and Development
OSSA, OSS Regulations	<i>Occupational Superannuation Standards Act 1987</i> (Cth) and Regulations
PBGC	Pension Benefit Guarantee Corporation
PST	Pooled superannuation trust
RBA	Reserve Bank of Australia
RBL	Reasonable benefits limit — the maximum lump sum (expressed in terms of average weekly earnings) after which tax concessions on lump sums diminish
Release 126 (etc)	Numbered release of policy guidelines by the ASC
Senate Committee	Senate Select Committee on Superannuation (Chairman, Senator Nick Sherry)
SGL	Superannuation Guarantee Levy
TCA	Trustee Companies Association
TPC	Trade Practices Commission
UTAA	The Unit Trust Association of Australia (now the IFAA).