

# **Submission to the Ministry of Economic Development**

## **Financial Markets Conduct Bill Exposure Draft**

Part of the Aon Corporation, Aon Hewitt is the global leader in human capital consulting and outsourcing solutions. The company partners with organisations to solve their most complex benefits, talent and related financial challenges, and improve business performance. Aon Hewitt designs, implements, communicates and administers a wide range of human capital, retirement, investment management, health care, compensation and talent management strategies.

Aon Hewitt has been providing actuarial advice and superannuation administration in New Zealand since 1979.

We are philosophically committed to workplace savings, employer sponsored superannuation schemes and KiwiSaver. We have a strong scheme administration division and actuarial and consulting divisions to provide associated services.

We administer 22 KiwiSaver Schemes (both restricted and non-restricted schemes) and 48 registered superannuation schemes, including both defined benefit and defined contribution schemes. The schemes managed (both KiwiSaver and superannuation) have a combined membership of approximately 60,000 members and combined funds under management of over \$2b.

Many of the superannuation schemes have been in existence for many years and are an integral part of the benefit package available to employees of the relevant employers. These schemes therefore need to be seen in this context as much as the context of being financial products. It should be taken into account that members may have made decisions about joining a scheme as part of their employment contract negotiations, rather than as a stand-alone investment decision, where they may be considering other investment products as an alternative. Changes affecting schemes and scheme trust deeds therefore need to be carefully considered and should not be undertaken unnecessarily.

The existing legislative framework has proven sufficient to protect members' benefits in the past and has enabled employment-based superannuation scheme members to have access to a savings option at a much lower cost than alternative retail options. The proposals as suggested will considerably increase the compliance costs and requirements for these schemes, with a possible outcome being that some schemes wind up to avoid the new regime. Our experience of schemes being wound up shows that only a very small percentage of funds (up to 5%) are transferred to another scheme with the remainder of the accumulated savings being paid out to members.

Given the time constraints for submission, and the length of the draft Bill, we have set down in this submission the initial issues we have identified, which in general relate mainly to

restricted schemes. We are available for further consultation and would like to work with you to ensure the continued smooth operation of employment-based superannuation schemes.

Our initial comments are set out in the following table:

| Clause Number         | Clause heading  | Submission  |
|-----------------------|---|---|
| Part 1                | Preliminary provisions  |   |
| 6                     | Interpretation  | The definition of “restricted scheme” (as applying to a superannuation scheme) is not properly defined.   |
| 6                     | Interpretation  | To be useful, the definition of “insolvent” needs to be more tightly defined as it could be interpreted in many different ways, particularly in relation to the valuation of the liabilities. A defined benefit scheme that is considered insolvent because it is slightly underfunded may at a future date become fully funded, due to the experience of the scheme (eg higher than expected investment returns).  |
| Part 4 and schedule 3 | Governance of financial products  |   |
| 111 (2)               | Initial and ongoing registration requirements for all managed investment schemes    | Clarification of which of the manager and supervisor requirements contained in the bill apply to restricted schemes is needed.  |
| 113 (1)(c)            | Additional initial and ongoing registration requirements for superannuation schemes | The requirement for NZ residence is overly restrictive for employers looking to recruit employees from overseas and does not seem justified when it does not also apply to other investment products except KiwiSaver. The same rules should not necessarily apply to both KiwiSaver and superannuation schemes just because both are intended for retirement savings. KiwiSaver has crown-funded incentives which do not apply to superannuation schemes.  |
| 113 (1)(b)            | Additional initial and ongoing registration requirements for superannuation schemes | The current requirement is that a scheme must be established “principally for the purpose of providing retirement benefits”. The proposed change is therefore a fundamental change to an investment and not just to the regulations monitoring that investment and there is no clear justification for this. It is also not clear whether the rules set out in existing superannuation trust deeds and participating agreements will need to be changed or can continue to apply.<br>It is questionable as to whether there will be any new superannuation schemes established in future and therefore the extent to which the current rules need a |

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|                |   | review should be considered. The emphasis needs to be on how the legislation will affect existing schemes  |
| 113 (1)(d)     | Additional initial and ongoing registration requirements for superannuation schemes | Trust deeds already set out the terms on which benefits can be paid and, as noted above, the likelihood of new schemes being registered is low. Adding any new restrictions would be unfair to members who have joined the scheme on the basis of the existing rules.  |
| 114 (1) (d)    | Additional ongoing registration requirements for restricted scheme                  | Very few schemes have an independent trustee at present, but we not aware of any problems that have arisen because of this. Appointing an independent trustee would be an onerous and expensive exercise, especially for smaller schemes.  |
| 117 (1) (f)    | Contents of governing document for registered scheme                                | We do not agree that all fees should be set down in the trust deed because not all fees either impact members' benefits (usually the case in defined benefit schemes) or are deducted from members' contributions. Fees may be alternatively deducted from the contributions made by employers. The need to include fees in trust deeds adds additional compliance costs because deeds would need altering every time one of the stated service providers was changed. Such fees can also be commercially sensitive, and if they do not affect members' benefits, it is questionable why they should need to be disclosed. |
| 117 (3)        | Contents of governing document for registered scheme                                | We would question why the governing document needs to provide for any notices issued under subpart 4 of part 8, when the fact that the FMA issues such a notice will override the governing document.  |
| 121            | Changes to governing document   | The proposed legislation itself will require changes to governing documents which will overrule existing trust deeds.  |
| 135            | Requirement to have supervisor or other independent person as custodian             | The requirement to appoint a custodian will mean additional costs and compliance for restricted schemes, as investments are currently often held in the name of the trustees and no custodian needed.  |
| 160            | Removal of manager of registered scheme   | The ability to remove trustees by special resolution would be contrary to the terms of most trust deeds, where only the sponsoring employer has the right to appoint and remove the trustees. There may be little benefit to the members to include this provision as the employer retains the right to appoint the replacement trustee.   |
| 173, 174 & 178 | Duty of investment manager, administration manager, and custodian                   | Defined benefit schemes that may be technically considered insolvent (but see comments above related to definition of insolvency) are not necessarily at risk of not   |

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|                       | <p>to report serious problems.<br/>           What person must do if duty to report serious problem applies<br/>           Duty of supervisor to report serious financial problems to FMA</p> | <p>providing the promised benefits to members. For example, a scheme providing only pension payments may continue to be able to meet those pension payments for many years (and become solvent at a future date) even though, if the scheme were wound up, there would be insufficient money to purchase an annuity to replace all of the pensions currently being paid.</p> |
| Part 9 and schedule 4 | Miscellaneous provisions  |  |
| 585                   | Reregistration process for existing schemes   | <p>The re-registration process needs to be kept as simple as possible to enable schemes to continue without any impact or cost on the scheme, as additional costs and compliance may result in schemes not bothering to re-register and therefore being wound up.</p>  |

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