



Extra Rules for DIY Super Funds

Trustees of Super Funds must follow the State Prudent Person rule laws as well as the rules set out in the Trust Deed and

in Commonwealth legislation, *Superannuation Industry (Supervision) Act 1993* ("SIS"). Many trust law principles have been incorporated in SIS.

The major additional rules for DIY Super Funds are:

- the sole purpose test (ie: retirement),
- the in-house asset rule, and
- prohibition on gearing

In the event that the trustees of a DIY super fund breached any of these duties, members of the fund can:

- attempt to resolve the matter with the trustee(s) of the fund;
- make a submission to the Australian

Prudential Regulation Authority (APRA); or

- seek a resolution in the Supreme Court.

Damages for non-compliance to Prudent Person

If a beneficiary believes that a trustee has not administered a trust in accordance with the Prudent Person rule, they may pursue several causes of action, the main one being breach of trust. The amount of damages that may be awarded against a trustee for a breach of the Prudent Person rule will depend on the loss suffered (such as actual loss or opportunity cost).

The trustee may also be able to bring actions against an adviser under contract law, negligence, the Corporations Law and/or the *Trade Practices Act* (false or misleading representations etc) for advice given, or for

advice not given where it ought have been given (ie: silence).

Conclusion

Acting as a Trustee or as a Financial Adviser to a trust has now become a more difficult and potentially dangerous occupation. Trustees and their Financial Advisers can only ignore the Prudent Person rule at their peril.

The National's trustee arm, National Australia Trustees Limited ("NAT") offers two levels of service which can minimise or even eliminate the risks. At the first level, professional advice on the specific requirements for any given trust can be given. At the higher level, sharing or outsourcing the risk, by engaging NAT to act as a co-trustee or sole trustee, is available. Even where NAT takes on a trustee role, the Trust's Financial Adviser may be retained as the Investment Adviser to the Trust. **PL**

NSW President Tom Goudkamp proposed in late 1999 that APLA should offer a service to country members and simultaneously promote our organisation through a regional tour.

A program was arranged covering Lismore, Coffs Harbour, Tamworth, Dubbo, Orange, Albury, Wagga Wagga and Goulburn. However, as a result of the Avgas emergency, a charter plane had to be replaced by commercial flights and hire car and as a result the last two days of the tour had to be cancelled.

The tour finally included Lismore, Coffs Harbour, Tamworth and Dubbo.

At each two-hour seminar, the speakers and topics were Tom Goudkamp on *Changes to the Third Party scheme: The Motor Accidents Compensation Act 1999*, Allison Robertson giving an *Update on the Workers Compensation legislation*, and Mark Edmunds on *Personal Injury Claims and the GST*.

The speakers were accompanied by Dr Hannah Middleton, APLA's NSW Campaign Manager, who looked after registrations and publicity.

Attendance ranged from 19 in

APLA NSW Regional Tour

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Tamworth to 30 in Lismore. The majority of participants were not APLA members.

In each of the four centres visited, appreciation was expressed that APLA had taken the trouble to come to town and present the talks. Participants pointed out that financial and time constraints meant they often could not get to Sydney for the many seminars and lectures on offer. APLA's initiative in taking speakers to the country was therefore most welcome.

In addition to the tour itself, APLA was promoted through the distribution to seminar participants of about 50 membership application forms and about 120 NSW State Conference brochures.

LBC was kind enough to sponsor the regional tour.

The tour received coverage on local radio with repeated news items on 2TM Tamworth, 2PK Parkes and 2DU Dubbo, and longer interviews on ABC Western Plains and ABC Wagga Riverina.

The tour was a success and clearly met a real need. APLA intends over the course of 2000 to repeat the project, reaching out to as many areas of New South Wales as possible. **PL**