

---

## TABLE OF CONTENTS

---

<b>Committee Report No 7: Retirement and old age</b> .....	232
7.1 Introduction .....	232
7.2 Overview .....	233
7.3 Retirement provision as part of the financial life cycle .....	234
7.3.1 The middle class .....	234
7.3.2 The poor .....	234
7.3.3 Entrepreneurs .....	235
7.4 Coverage .....	235
7.4.1 Formal sector .....	235
7.4.1.1 Recommendations.....	236
7.4.2 Informal sector.....	236
7.4.2.1 Recommendations.....	237
7.5 Regulation of retirement industry.....	238
7.5.1 Types of funds .....	238
7.5.2 Boards of management .....	238
7.5.2.1 Recommendation .....	239
7.6 Assets and investments .....	239
7.6.1 Cash flows .....	239
7.6.2 Demographic trends .....	240
7.6.3 Principles of investment.....	240
7.6.4 Government obligations.....	241
7.6.4.1 Recommendation .....	241
7.6.5 Asset classes and risks .....	242
7.6.6 The “herd mentality” approach .....	242
7.6.6.1 Recommendations.....	244
7.6.7 Foreign investment.....	244
7.6.7.1 Recommendation .....	244
7.6.8 Managing collapses in the market.....	245
7.6.9 Corporate governance .....	246
7.6.10 Passive investors .....	246
7.6.10.1 Recommendation .....	246
7.6.11 Company law.....	246
7.6.11.1 Recommendation .....	247
7.6.12 Conflicts of interest .....	247
7.6.12.1 Recommendation .....	247
7.6.13 Professional body .....	247

7.6.13.1	Recommendation .....	247
7.6.14	Stockbrokers' commissions.....	248
7.6.14.1	Recommendations.....	248
7.7	Administration costs and rationalisation.....	248
7.7.1	Recommendation .....	249
7.8	Taxation.....	249
7.8.1	Taxation of contributions.....	249
7.8.1.1	Recommendations.....	249
7.8.2	Taxation of income.....	250
7.8.2.1	Recommendations.....	250
7.8.3	Taxation of benefits.....	251
7.8.3.1	Recommendation .....	251
7.9	Benefits.....	251
7.9.1	Simplicity .....	252
7.9.2	Leakage and unemployment.....	252
7.9.3	Retirement funds used for unemployment .....	252
7.9.3.1	Recommendations.....	252
7.9.4	Settling debts.....	253
7.9.4.1	Recommendation .....	253
7.9.5	Lump sums versus pensions.....	253
7.9.6	Protection against inflation.....	254
7.9.6.1	Recommendation .....	254
7.9.7	The ratio of benefits to contributions .....	255
7.9.7.1	Current position.....	255
7.9.7.2	Theoretical objectives.....	255
7.9.8	Cross subsidies .....	255
7.9.8.1	Recommendation .....	256
7.9.9	Transfer values.....	256
7.9.9.1	Recommendation .....	257
7.10	State old-age assistance.....	257
7.10.1	Coverage .....	257
7.10.2	Administrative delays.....	257
7.10.2.1	Recommendation .....	257
7.10.3	Level of Social Old Age Pension(SOAP) .....	257
7.10.3.1	Recommendation .....	258
7.11	Consumer protection issues (pensions, life and disability insurance) .....	258
7.11.1	Excessive sales and lapses, but few complaints .....	258
7.11.2	Commissions .....	259
7.11.2.1	Recommendations.....	260

7.11.3	Voluntary additional cover.....	260
7.11.3.1	Recommendation .....	261
7.11.4	Competition .....	261
7.11.4.1	Recommendations.....	262
7.11.5	Annuity markets .....	262
7.11.5.1	Recommendations.....	263
7.11.6	Unclaimed benefits .....	263
7.11.6.1	Recommendation .....	264
7.11.7	Education .....	264
7.11.7.1	Recommendation .....	264
7.12	Other issues.....	264
7.12.1	Maximum retirement age .....	264
7.12.1.1	Recommendation .....	265
7.12.2	Cession of benefits .....	265
7.12.2.1	Recommendation .....	265
7.12.3	Divorce .....	265
7.12.3.1	Recommendations.....	265
7.12.4	Forum shopping .....	266
7.12.4.1	Recommendation .....	266
7.12.5	Surpluses.....	266
7.12.5.1	Recommendation .....	267
7.12.6	Taxation of endowment assurances .....	267
7.12.6.1	Recommendation .....	267
7.12.7	Institutions for the frail .....	267
7.12.7.1	Recommendation .....	268
7.13	Conclusions .....	268
	REFERENCES .....	270
	ENDNOTES .....	272

---

## LIST OF FIGURES

---

Figure 7.1:	Proposed strategic framework for retirement provision in South Africa.....	268
-------------	--	-----

---

## LIST OF TABLES

---

Table 7.1	Summary statistics on the retirement industry .....	233
Table 7.2	Distribution of institutional assets (end 1999).....	239

---

## Committee Report No 7

### *Retirement and old age*

---

#### **7.1 Introduction**

A significant portion of this section of the report reviews existing social insurance measures with particular emphasis on retirement and old age. Social insurance as a critical element of social security and more broadly social protection is defined as: provisions made on the basis of previous contributions and the occurrence of a particular contingency such as unemployment or retirement.<sup>1</sup>

Social insurance is used in this section to describe pensions and other benefits payable on retirement, death of a breadwinner, disability, unemployment, for medical expenses and in the event of a natural disaster. They are currently paid—in the private sector—by life and short-term insurers, pension, provident, retirement annuity and benefit funds, medical aid schemes, and—in the government sector—by the Unemployment Insurance Fund (UIF), the Road Accident Fund, the Compensation Commissioner and the Department of Labour.

The main social policy objective of this section is to ensure that people are able to make adequate provision through a contributory system to provide for their old age, retirement and other risks and contingencies that may befall them during their financial life cycle. Furthermore since this policy objective has to be a part of a comprehensive system of social protection, proposals are made to ensure the effective interface between contributory and non-contributory forms of provision. The institutional policy objective is to ensure an integrated benefit system that ensures that people are able to survive hardship and risk irrespective of their circumstances or life chances.

South Africa's social insurance system, as represented by the private pension and insurance sectors, is estimated to be the largest in the world relative to gross national product (GNP).<sup>2</sup>

Major achievements have been noted, particularly since the advent of democracy:

- The Social Old Age Pension (SOAP) has reached racial parity
- The Government Employee Pension Fund (GEPF) is fully funded and managed in accordance with sound accounting and actuarial practice
- Trustee legislation has been passed to ensure democratic and effective management among many others.

Despite these changes, gaps and weaknesses have been identified in this area of social policy. Growing numbers of people appear to be excluded from the contributory pension system because of atypical and informal sector work. Powerful vested interests control the insurance and related industries and investment choice. There is limited state capacity to monitor compliance with trustee laws across 15 000 funds. Inadequate consumer protection exists and little real competition in the

environment limits options for members. Moreover, issues that are related to compulsory preservation for the formally employed, portability of benefits and taxation and overlaps with other sectoral policy areas have yet to be addressed. Key recommendations are made to address such problems in the report.

## 7.2 Overview

Internationally, retirement and old-age provision is a crucial element of social security provision. In the South African environment, the patterns of retirement and old-age provision have largely reflected the country's history of race-based exploitation and social exclusion. However, the country has moved steadily to do away with race-based discrimination (the Smith Committee shows the move began in the 70s), and the days when white social pensions were many times that of black social pensions are over (Smith Committee figures show about 8 times more than in the 60s). Today the concern is how to improve and utilise the retirement and old-age framework and its components, both private and publicly provided, to achieve comprehensive social policy objectives.

An overview of the main features of the social insurance system points to South Africa as rather unique. Pension funds account for R600 billion of institutional investor assets, being the major provider of the equity listed on the Johannesburg Stock Exchange. Pension fund contributions from 80 per cent of the formally employed amount to R54,3 billion a year—14 per cent of total personal remuneration in South Africa (table 7.1). As a result, South Africa rates fourth in the world for pension fund assets, after the UK, Switzerland and the Netherlands. In terms of private pension fund assets to GDP, South Africa is first in the world.

The Financial Services Board (FSB) 1998 annual report shows that formal group retirement funds, for which they were able to provide statistics, have almost 11 million members (but 1,7 million are retired and there are a number of duplications).

Given the size of the sector, it is not surprising that there is significant diversity within it. The diversity in itself is to be welcomed, but questions arise as to the effects of legislation (both supervisory and tax related) on the private sector, and the interface between private and public institutions and the benefits they pay.

**Table 7.1 Summary statistics on the retirement industry**

	<b>Funds</b>	<b>Members</b>	<b>Contributions</b>	<b>Assets 000's</b>
	<b>R million</b>		<b>R billion</b>	
Self-administered	2 682	2 963	18 987	278
Underwritten by insurers	13 127	6 416	20 339	132
Government	7	1 438	14 888	194
Industrial	8	76	100	1
<b>Total</b>	<b>15 824</b>	<b>10 893</b>	<b>54 314</b>	<b>605</b>

To this can be added another R8 billion in contributions to retirement annuity funds administered by insurers. A large proportion of the R27 billion regular, premium life assurance is also written as endowment policies that are intended to mature at retirement.

The total accounts for almost 20 per cent of personal remuneration. This is considerably higher than necessary if no withdrawals were ever made. The figures do, however, tend to corroborate the Smith Committee estimates that some 80 per cent of formally employed workers are covered by retirement funds.

### **7.3 Retirement provision as part of the financial life cycle**

Since retirement provision as a core element of social insurance is based on contributions, it is helpful to consider this through the financial life cycle of people and the major events and risks that shape these periods.

#### **7.3.1 The middle class**

Provision for retirement can be seen in the context of the financial life cycle—as it applies to middle class wage earners (whether employed or self-employed).

- **20s** Starting work, and in most cases marriage, children and establishing a separate household. If possible, six months salary must be saved for a deposit on a house by the age of 30.
- **30s** Buying a house, which will require saving about two year's salary, or 20 per cent of earnings over the decade. (If 15 per cent of earnings must be saved in a retirement fund, then most people will still have a significant mortgage by the end of the decade.)
- **40s and 50s** Pension provision, which requires about five year's salary or 25 per cent of earnings over the two decades.
- **Healthy over 60s** Depending on finances and inclination, these people can choose to work or retire or some combination of the two.
- **Unhealthy over 60s** These people will not be able to work, and as they become frail increasingly need help in their activities of daily living. Included in these activities is the management of their finances.

#### **7.3.2 The poor**

Low levels of formal employment amongst poorer young South Africans mean that paid work usually begins at a relatively advanced age. This in turn disrupts their chances of marriage and separate household formation, and makes saving difficult at all ages. Opportunities for formal employment need to be created, and inexpensive housing provided. In their absence, saving is not feasible, and government will probably have to continue to provide a non-contributory old-age pension.

The success of micro-lenders in making loans available to poorer people illustrates that poor people are short of capital and prepared to borrow at high rates of interest. Under these circumstances, compelling them to invest at much lower rates of interest for retirement will have the effect of impoverishing them further.

### **7.3.3 Entrepreneurs**

Whatever the scale of their operations, people working in their own business need capital, which inevitably makes them save a considerable proportion of their income.<sup>3</sup> This is desirable to the extent that the return on capital in their enterprises is greater than the cost of capital they would otherwise have to raise. The concentration of their assets in their own businesses represents, however, a risk that may leave them destitute in retirement.

It is frequently argued that people do not save for retirement because they are myopic. For the poor, the middle class under 40 years paying off their homes, and for entrepreneurs, this is clearly not the case.

At older ages, however, people need to secure their retirement savings if they are not to be a burden on their children, others in society, or on state support. A legitimate case can therefore be made for compulsory saving for people earning above a certain minimum income level, and after some age (say 40). For example, paying 12 per cent of taxable income to a retirement fund that accumulates at a real rate of 4 per cent for 25 years, will provide a pension of approximately 40 per cent of average pre-retirement income over the period.

## **7.4 Coverage**

### **7.4.1 Formal sector**

The term “organised formal sector” is used to describe businesses registered for tax purposes. They are usually organised in labour and employer federations, or self-employed people likely to be organised in professional associations. While noting that the statistics are invariably unreliable, this sector was estimated by Ntsika to account for some 75 per cent<sup>4</sup> of employment in 1996.

Organisations in the formal sector are more likely to keep accounting records, pay rents and comply with the regulatory environment. The minimum wages and aspirations of those employed in this sector are such that they are largely covered to some extent by private insurance—either as part of their employment contract or through voluntary arrangements. However, here the Committee notes that there is growing informalisation of the formal sector (through increasing part-time, casual and seasonal work). Ultimately this situation will erode formal sector coverage.

Some smaller employers do not offer retirement funds to their employees. Research<sup>5</sup> suggests that it is primarily those with an uncertain future that employ lower income individuals. Strong arguments

suggest that they should be compelled to offer retirement benefits. On the other hand, it is also argued that a requirement to subscribe to a retirement fund adds an additional administrative burden, and financially-precarious employers and employees see the contributions as an extra tax. Compulsory retirement provision will therefore tend to drive such employers into the informal sector.

The needs of precarious small employers, and the needs of low-income people for immediate cash, therefore need to be carefully considered. The former requires schemes with simple rules and administrative systems.

Nonetheless, through ensuring that those who can afford to do so contribute towards their retirement provision, the burden on the state and other members of society could be alleviated, thus freeing state resources for other important aspects of the comprehensive social protection system. (This reduction of SOAP only applies if the means test is retained.)

The evidence that this is true is very mixed. At best, one might say that: “Some economists believe that this will increase savings and have a beneficial effect on economic growth, but this is disputed by others.” “Panel analyses have shown that earnings-related, above-minimum protection is the major device that prevents households from sliding down to poverty and even to multi-dimensional deprivation.” (Berghman, 1997.)

#### **7.4.1.1 Recommendations**

The Committee recommends that all people employed in the formal sector (including all casual and part-time workers) be required to contribute a prescribed minimum percentage of their income for retirement saving. This could be redirected to repay a housing bond if they were under the age of 40. The Financial Service’s Board has suggested that exemption could also be given where the monthly contributions were so low that administrative costs exceed 25 per cent of the contributions.

In this regard, it is important to note that the income support measures proposed elsewhere in the full Committee report will more than compensate poor households for the reallocation of disposal income to retirement saving.

It would be administratively easier to place the onus on employers to make the deductions from wages and remit them to a fund. Where employers are not required by industry level agreements to contribute through an industry fund an alternative arrangement will be required. The establishment of a national scheme/fund operated as a component programme of a National Social Security Agency for this purpose is considered elsewhere in the report. This might be set up and operated by government, or government officials could require contributions to be paid to approved privately administered funds. Compliance might be monitored and ensured through the Department of Labour or the South African Revenue Service (SARS) as both have access to employer records.

Income Tax returns require employers to disclose the existence of a retirement fund. The Committee recommends that SARS should identify non-contributors. Further, the Department of Labour (through the Compensation Commissioner) should pursue non-compliance and ensure that all employers contribute to an approved retirement fund. Provision should be made to take action against employers who fail to comply.

#### **7.4.2 Informal sector**

Informal traders, small-scale manufacturers and domestic workers characterise the sector. As non-taxpayers, individuals can usually be assumed to earn less than R23 000 annually.

Bringing these employers into a regulatory framework like that in the formal sector is relatively more expensive. They are also unlikely to have the inclination or the capacity to conform to such regulation. They frequently do not keep accounting records nor pay rents. Evidence from the United States (US)<sup>6</sup> is that employers in this sector do not participate in formal retirement funds largely because of the volatility of both their income and that of their employees. The experience of SARS tax-base expansion exercise would confirm the existence of many businesses with these characteristics in South Africa.

In terms of social insurance, people in this sector often earn too little to make economical contributions to formal sector insurance institutions. They are also employed in micro-enterprises with few employees that do not permit economies of scale. The point at which contributions to retirement or insurance funds becomes economical is debatable. Monthly administrative costs are unlikely to be kept at below R30, while distribution costs (marketing in the private sector, and enforcement in the public sector) may double this. The costs for someone earning R1 500 monthly and contributing 15 per cent of their income for insurance would be some 3 per cent of income (and 20 per cent of contributions).

Most people employed in this sector rely on the government non-contributory disability and old-age grants for cover. The current level of these grants is sufficiently high, relative to the earnings of the majority of recipients to regard them as social insurance rather than social assistance. Funding them through general tax revenue is more efficient than making them contributory in the same manner as for the formal sector.

##### **7.4.2.1 Recommendations**

This group will most likely continue to depend on the state old-age pension.

Representations to the Committee have included suggestions for a low-cost National Savings Scheme/Fund that can cater specifically for the growing numbers of workers who are likely to be excluded from formal, regular employment retirement funds. These include the lowly paid, informal and especially vulnerable workers. Such a scheme, preferably administered through a non-profit public entity, would cater for workers with unstable incomes and irregular contribution patterns. It is

not clear, however, that such a scheme would be able to function at a lower cost level than existing savings arrangements offered by banks and insurers.

The Committee endorses these suggestions and considers that such a National Scheme, apart from providing benefits for informal workers, would compete with existing schemes and promote much needed competition in the industry.

The Committee therefore recommends that the establishment of such a National Scheme/Fund should be investigated by the Development Bank of South Africa (DBSA) and the Industrial Development Corporation (IDC) in consultation with the Financial Services Board (FSB), South African Reserve Bank (SARB), the Department of Labour and relevant stakeholders.

## **7.5 Regulation of retirement industry**

### **7.5.1 Types of funds**

The retirement fund industry covers retirement funds and their service providers. These include life assurers, insurance brokers and consultants, administrators, investment managers and stockbrokers, and professionals such as actuaries, lawyers and accountants. Most retirement funds are registered with the FSB, and three different types are approved by the Commissioner for Inland Revenue.

The three types of funds recognised by the Income Tax Act are:

- **Pension Funds**, which must be compulsory for all members of a particular class of employee and which must pay annual pensions—of which a third may be commuted. Contributions by employers and employees are largely tax deductible.
- **Provident Funds**, which are similar but may pay benefits in the form of lump sums, where only the employers' contributions are deductible.
- **Retirement Annuity Funds**, which are open to voluntary membership and where contributions are deductible up to a maximum of 15 per cent of taxable income (less if the member is also a member of a pension or provident fund).

All funds regulated by the FSB are subject to common governance procedures. They must have a set of rules, a board of management of which 50 per cent are elected by the members, and produce (where appropriate) audited accounts, actuarial valuations and reports to members.

The larger funds (including the government funds) are frequently self-administered. They can use the services of 176 professional fund administrators and 74 investment managers registered with the FSB, or perform the functions in-house. Where they offer risk benefits, some element may be reinsured with a life assurance company.

Most of the smaller funds are underwritten by insurance companies, which issue a policy covering both investments and risk benefits. They also provide administration.

### **7.5.2 Boards of management**

Most boards are equally divided between employer and employee appointed trustees, who have primary fiduciary duties to members. Employee appointed trustees are likely to have greater technical knowledge, but the requirement that at least 50 per cent of the boards must be elected has done much to ensure greater balance.

Not many trustees are financial or legal experts and they are, therefore, largely reliant on expert help for the administration of their funds and the investment of assets. The combination of representative lay trustees and professional service providers does, however, give much more power to members than alternatives that vest greater power in the experts. It does need to be emphasised that the system does require some diligence in preserving. Professional service providers will always face temptations to shift power towards themselves—for reasons of short-term efficiency and commercial interest.

These pressures can be seen in two of the trends currently observable in the retirement fund industry. The first is investment choice that devolves power of investment choice from trustees to members. Members are, however, in an incomparably weaker position when it comes to monitoring the value of investment management services. This is likely to lead to a decline in the standard of management accompanied by an immediately observable increase in costs. The second is the suggestion of paid professional trustees as recommended, for instance, in Myners (2001). This again has apparent advantages, but clearly weakens the position of the lay trustees in board meetings. If trustees want independent advice, they would be advised to contract others to provide it, rather than surrender some of their powers.

#### **7.5.2.1 Recommendation**

The Committee recommends that the principle of lay trustees with direct connections to the members be encouraged. Payment to trustees for services rendered not be permitted. Elected trustees be required to declare relationships with any professional service provider at elections.

### **7.6 *Assets and investments***

The SARB reports the distribution of assets in South Africa roughly as reflected at the end of 1999 (table 7.2). There is much double counting where institutions have invested money in each other. The institutions value their assets at market value; the physical assets are on an adjusted cost basis. The market value of private sector assets may be as much as twice their accumulated cost. It does appear, however, that the assets accumulated by the long-term institutions account for the greatest share of the country's total assets.

**Table 7.2 Distribution of institutional assets (end 1999)**

	<b>R billion</b>
Life assurers	644
Short-term insurers	60
Retirement funds	649

### **7.6.1 Cash flows**

In macro-economic terms (ignoring foreign transfers), pensions must ultimately be funded from one of the elements of national income:

- Personal remuneration
- Income from investments (interest, rents and profits)
- Depreciation.

In South Africa the ratio between these was 56:29:15 in 1999;<sup>7</sup> in developed economies with better-educated workforces, the ratio is closer to 70:15:15.<sup>8</sup>

### **7.6.2 Demographic trends**

These proportions can be compared with the proportion of pensioners in a population. This is because pensioners can be expected to absorb a pro rata share of the national income. It can be calculated that people over 65 account for some 15 per cent of the population if life expectancy averages 75 and there is no population growth. This percentage reduces to a mere 5 per cent if the population has been growing at 3 per cent annually for some time, but can increase to 25 per cent if the population has been declining at 2 per cent for many years.

Developed countries with rising life expectancies but declining populations may have to find additional means of allocating a sufficient proportion of the national income to pensioners.

The above analysis shows that pensioners have to receive cash flows from personal remuneration as well as from investment income. The whole of company profits (15 per cent of national income, but only dividends are distributed) plus reasonable contributions from active members (of about 10 per cent of national income) will barely be sufficient to make up pensions for 25 per cent of the population.

Put another way, pension funds will not be able to find sufficient equities to fund their liabilities. Attempts to do so will lead to unsustainable increases in equity prices, for which recent price bubbles serve as a warning. Any changes to the regulatory regime must, therefore, be approached with caution and phased in over a number of years to avoid disruptions.

### 7.6.3 Principles of investment

The following principles of investment are important:

- **Suitability** The investments need to be in assets or instruments where the legal rights of the investor are certain and not likely to be compromised.
- **Matching** The investments must be capable of providing the funds necessary to pay benefits when they fall due. This can be achieved by appropriate matching by term, or if the assets are easily tradable.
- **Efficiency** Riskier investments are likely to give higher yields. An “efficient frontier” of portfolios can be constructed such that, for investment portfolios on that frontier, expected returns cannot be increased without increasing risk, nor risk reduced without impairing expected returns. Investments ought to be chosen to construct a portfolio on the efficient frontier that best meets the desired risk and return objectives of the fund. Widespread (but not universal) agreement could be found for asserting that the measure of risk that should be used for retirement funds is the risk of investment returns falling short of the growth of remuneration.
- **Transparency** The net effect of investment choices, whether offering optimum yields, providing implicit subsidies or representing indirect taxes, should be made as transparent as possible.
- **Diversification** The achievement of each of these principles will be enhanced by the diversification of the investments across different asset classes. Asset classes can perhaps be defined as giving access to different elements of the national income. In some cases it may be desirable to create new classes. Retirement funding arrangements appear to have contributed the bulk of all investments in South Africa, so adapting investment markets to their needs could be considered.

### 7.6.4 Government obligations

Retirement funds, including the GEPF, and long-term insurers own (directly and indirectly) some 50 per cent of fixed government debt. The interest payments on the debt, which has an average term of some 7 years, represents approximately 25 per cent of government tax revenue. Government finances are therefore significantly exposed to the risk of its tax base falling relative to its interest obligations. This can occur by reduction in:

- The rate of inflation, which will affect every element of the tax base.
- Individual taxable incomes through lower productivity growth, technological changes or changing terms of trade.
- The number of individual taxpayers through job losses, emigration or lower population growth.

- Company turnover and income through lower productivity growth, technological changes or changing terms of trade.

➤

In the last 20 years, governments around the world (even with low inflationary expectations) have begun to issue inflation-linked stocks that have protected them against risk. The South African government followed in early 2000.

In this regard, the Committee has also considered wage-linked bonds. This would allow participation in the overall level of growth in remuneration. Such instruments have rarely been issued elsewhere, perhaps because pay-as-you-go (PG) schemes have provided essentially the same protection to pensioners. The link to “wage inflation” would pose some technical difficulties, but it is essentially no different from a link to price inflation.

The initial servicing requirements of these instruments will be much lower than conventional bonds. This will have the impact of apparently reducing the budget deficit—if measured on the current cash flow basis.

#### **7.6.4.1 Recommendation**

The Committee recommends that government explore wage-linked bonds as a measure that is possibly more appropriate to the needs of retirement funds, and to its own risk management strategies.

#### **7.6.5 Asset classes and risks**

The asset structure of private retirement funds differ in different countries. In South Africa, as in other countries with a history of relatively high inflation, real assets such as equities and properties make up the largest asset class. Shares have also given a higher return than other asset classes in the long run.

To the extent that there are possibilities of a return to high rates of inflation in South Africa, fixed interest bonds ought not to make up too large a percentage of fund assets. Inflation or wage-linked bonds are more appropriate as they offer opportunities for diversification and give protection against inflation.

Foreign equities may also be appropriate in smaller quantities. The latter can offer diversification against risks of innovation such as technical and legislative changes that may benefit some economies and industries at the expense of others, but it also exposes retirement funds to the additional risk of fluctuations in the purchasing power parity of the rand.

It is clear that investment in South African assets is likely to yield higher returns than investment in developed economies. In addition, the risks that arise from fluctuations in purchasing power parity are somewhat greater than is currently understood. The relatively widespread current perception that foreign investments produce greater returns arises from a combination of rapid inflation in international stock exchange prices, a relatively poor performance by South African shares, and a fall in the purchasing power parity of the rand in the last decade.

The higher returns offered by local assets, and the lower risks—when expressed in rands—attaching to them, suggest that retirement funds should limit their exposure to foreign investments. It is apparent from the above that the South African shares and wage and inflation-linked bonds—in that they are largely positively correlated with wages—offer the most appropriate investments for retirement funds.

#### **7.6.6 The “herd mentality” approach**

A number of commentators note that investment managers are constrained by the need to produce returns more or less in line with their competitors. While a return slightly less than the average is unlikely to lead to a loss of business, a significant deviation may well do so. Investment markets are too uncertain for any manager to be entirely sure of any particular strategy, so the safest approach is to copy “the herd”. Trustees also limit their risk of litigation and loss of office by following what other trustees are doing.

The effects of this are demonstrated in two ways. Firstly, in a slowness to adapt to new opportunities (such as foreign investment in South Africa in the mid-90s) and adopt new instruments (such as inflation-linked bonds in all countries where they have been issued). Secondly, in reluctance to invest in unpopular asset classes (such as venture capital in countries other than the US). Given the funds’ importance in the investment markets, this may have a negative impact on national economic growth and stability. Investors are also likely to be slow to take up a wage-linked investment for these reasons. This issue was the subject of the Myners report<sup>9</sup> recently released in the UK, the recommendations of which are similar to those proposed in this paper.

Published investment indices play an important role in determining the investment policy of trustees. It would appear that these indices are “common goods”—which have not been adequately developed because the cost for each participant would outweigh the direct benefits gained. The Johannesburg Stock Exchange and the Actuarial Society in South Africa commonly provide the most extensively used indices.

The creation of a more extensive performance index might assist in speeding up the responses of investors. As a common good, this index could be constructed under the auspices of the FSB. It could then provide a benchmark against which funds are required to report their performance. It could have the following properties:

- The proportions invested in each asset class would be related to an “ideal” potential pension fund portfolio rather than the size of the investments currently held by retirement funds. In this, it would include more inflation and wage-linked assets—based on government’s preparedness to issue more.
- It should include all possible investments including unfashionable investments (currently such as venture capital and residential property). The proportion to be included, and the performance of the unlisted investments, will have to depend on information gathered from participants in these markets.
- The South African equity sector should exclude untradable shares such as those held by pyramid companies, founding families and trusts, and probably those held by foreigners. (The latter can perhaps be included as foreign shares.)
- It should be sub-divided as far as possible into sectors that are vulnerable to a particular set of risks. There should be a number of different sub-divisions (as with the Barra methodology). It is important to distinguish between the local and foreign earnings of companies. (This will also prevent current problems where shares listed on both the South African and UK market can be reporting different historic yields on the different markets.)
- It should include more data relevant to measures of the underlying value of the companies. These could include turnover, net asset value and management forecast of earnings.
- The weighting of each sector in the benchmark is a matter of judgement. The published indices could therefore, give two or three alternative “universes”—based on opinions from different expert groups in the industry. Given the risks of foreign investment, and the strongly held view that local investment should be encouraged, a locally focused version could be one of these universes. Trustees and investment managers will tend to face business risks to the extent that they deviate from the published benchmarks.
- Proposals have already been made by the FSB to amend the regulations governing retirement fund investments, which will require trustees to specify benchmarks and permissible deviations to their investment managers.

#### **7.6.6.1 Recommendations**

The Committee recommends that the FSB develop appropriate benchmarks for use by retirement funds, and investment managers be required to measure their performance against these benchmarks.

As discussed in the previous section, the investment of a significant portion of the assets of each retirement fund in government wage-linked bonds would provide the equivalent to a second-tier government guaranteed pension. On the other hand, this would be equivalent to a reintroduction of prescribed assets, with its distorting effect on the market.

The slow response of trustees and investment managers to the introduction of the inflation-linked bond would suggest that they would be even slower in adopting an instrument that has not been introduced in significant amounts internationally.

The Committee recommends that retirement funds initially be required to allocate a portion of their assets in such an instrument, and that this requirement be gradually increased to a level of 25 per cent of the market value of the assets and then abolished when this is achieved. The initial yield on these investments should be in line with the return on marketable investments.

### **7.6.7 Foreign investment**

The investment of retirement fund assets varies widely from country to country. In most, the proportion of international equities is relatively low. In Eire and the Netherlands, though, the proportion of foreign shares is well over 50 per cent of total equity holdings. This can be explained by the size of their stock markets and their membership of the European Union.

The South African stock market is relatively large, but the number of purely South African-based firms is declining rapidly. This means that the exposure of retirement funds to non-South African investments is rising rapidly. Given this, and current misperceptions that foreign investment is bound to outperform local investments, and the fact that there are no measures whereby trustees can gauge their exposure to a rise in the purchasing power of the rand, increases to foreign investment allowances would appear unwise at present.

#### **7.6.7.1 Recommendation**

The Committee recommends that no further increases in international investments be permitted until a performance index divided into local and foreign exposure is created. After that, the standard benchmarks suggested in the previous section should provide some discipline.

To the extent that wealthier South Africans may want to hedge their socio-political risks, further lifting of restrictions on individual investments seem acceptable as and when this proves expedient. As the money expatriated may well be spent outside South Africa, there seems some logic in charging VAT on the amounts transferred.

### **7.6.8 Managing collapses in the market**

DC funds without an employer's guarantee do not offer their members protection against a significant fall in the realisable value of their investments.

The biggest risk is a collapse in the market value of shares. Two different types can be identified. The first coincides with a dramatic drop in confidence such as occurred in South Africa in 1976. Shares on this occasion, however, offered strong dividend flows (10 per cent at the bottom of the market), which would have alleviated the difficulty in paying pensions—if not lump sum benefits. The

second type occurs after a collapse in a stock market “bubble”, as occurred in 1969 in South Africa. Dividend flows were much weaker at the low point of the market (although still relatively high at 5 per cent), but investors who had been invested over a longer period (5 years in this case) merely lost what they had gained in the bubble.

Two points can be made:

1. Although investment in equities has in the past, and would appear in the future to offer high long-term returns, retirement funds ought to continue to hold a balanced portfolio of assets. This need becomes greater as the members age and more benefits fall due.
2. The solvency of retirement funds, and the security of the benefits they are able to pay, are enhanced if the companies in which they invest, pay higher dividends.

This requirement of the institutional investors has been largely ignored as companies in South Africa (and internationally) pay a smaller proportion of their profits out as dividends than previously. One reason is that the Miller Modigliani “dividend irrelevance proposition” that shareholders can sell their shares if they want cash, is widely taught in business schools. This assumption has some validity in some foreign markets, but much less in a South African market, which is far less liquid and therefore more vulnerable to shocks.

The other major assumption is that companies will use the retained earnings for further investment. The accumulated evidence, as discussed by Kaufman *et al* (1995), refutes this. Company managements tend to retain more of their earnings than required to expand their businesses, and the cash accumulated tends to “burn a hole” in the corporate pocket. It is often not spent on economic projects but rather on greater executive remuneration or unnecessary take-overs.

The attractiveness of the theory can perhaps be ascribed to its favouring of the vested interests of established companies and managements. Newer and expanding companies find it more difficult to raise capital if they do not have the necessary retained earnings.

The proposition is also theoretically flawed in that it fails to recognise the socially useful smoothing function performed when companies attempt to smooth their dividends. Smoothed dividends could provide a regular income to those dependent on their capital, and a useful measure to retirement funds in determining the pensions they can pay.

The other reason for the increase in retained earnings has been Secondary Tax on Companies (STC), which provides a perverse penalty to cash dividend payments. The introduction of Capital Gains Tax (CGT) will partly mitigate the artificial incentives.

### **7.6.9 Corporate governance**

The suggestions below are designed to ensure consumer protection for pensioners and transparency of the corporate sector.

### **7.6.10 Passive investors**

The assets accumulated for retirement—in retirement funds, life insurers and unit trusts—appear to account for over half of the equity capital raised in South Africa. This has been described alternatively as people’s capitalism or pension fund socialism. It offers opportunities for the democratisation of corporate governance in the private sector. As most of the retirement fund members are black, it also provides an obvious opportunity for greater black participation in the economy.

Unemployment, ironically, offers opportunities to South African businesses as it leaves under-utilised “resources”. Of the many reasons for unemployment, one is the complacent attitude of management that can arise if shareholders fail to monitor them adequately.

It is widely noted, however, that members are largely passive in their role as investors through their retirement funds. The reasons relate partly to the additional costs of participating in corporate governance functions, the powerlessness of “minority” shareholders, and the reluctance of investment managers to critically examine the actions of powerful boards of directors.

Each of these problems can be addressed. Some jurisdictions require retirement fund trustees to exercise their votes at general meetings, and to take more active steps where there is a “reasonable expectation that doing so might raise the value of the investment.”<sup>10</sup>

#### **7.6.10.1 Recommendation**

The Committee recommends that this requirement become part of South African law—applying also to insurance and unit trust shares. Trustees, or their delegated agents, be required to apply their minds to the major issues of corporate governance such as full accountability to shareholders, the appropriate structure and functioning of the board, and the control of management remuneration.

### **7.6.11 Company law**

Cross holdings, pyramid companies and shares with disproportionate voting power have been a blot on South African corporate governance for many years. “Winner takes all” rules for the election of directors has also meant that majority shareholders have unfettered control of a board of directors. The perception thus created is of corporate power, excessively concentrated and lacking in enterprise—as evidenced by a failure to grow and create jobs.

While the dismantling of these artificial control structures has begun, it might be further expedited. Branson (1993) reports that nearly a dozen US states require companies to give proportional representation on their boards to minority shareholders with favourable effects on their share prices.

#### **7.6.11.1 Recommendation**

The Committee recommends that all public and private companies be required to amend their articles of association in order to achieve representation of minority shareholders (including minorities indirectly held through pyramids and cross holdings) on their boards of directors. As both government and union controlled funds are significant investors, they will be entitled to representation on a number of boards. This should therefore boost the representivity of boards.

#### **7.6.12 Conflicts of interest**

Most investment managers continue to be associated with financial conglomerates and face unavoidable conflicts of interest. These occur when the investment managers are asked to judge whether trust funds they administer should participate in investment underwriting and whether they should invest in the group which employs them. Conflicts also occur when making decisions about portfolios or shares in which they have personal interest.

A perfunctory inspection of investment performance results over much of the past decade shows that the significant independent managers have outperformed managers tied to financial conglomerates. Investment management is not capital intensive. There might be merit in requiring conglomerates to divest themselves of investment management functions.

The FSB's actions on insider trading by directors and managers have resulted in great improvements recently. These should be continued. More frequent reporting—together with a requirement on managements to make earnings forecasts—would enhance the protection given to investors.

#### **7.6.12.1 Recommendation**

That other companies be prohibited from investing in the shares of registered investment management companies (or scrap section)

#### **7.6.13 Professional body**

The Association of Investment Management and Research (AIMR) is an international professional body with a comprehensive code of ethics and the highly regarded CFA qualification. It gives no separate records for South Africa, but a majority of the 1 800 who wrote their examinations in Africa are assumed to be South Africans.<sup>11</sup> The Investment Analysts Society of South Africa (IAS)<sup>12</sup> has 2 400 members, and runs AIMR courses.

### **7.6.13.1 Recommendation**

The Committee recommends that:

- Membership of the IAS become a prerequisite for registration as an investment manager—as soon as possible.
- The IAS adopts the AIMR codes of conduct and professional discipline.
- Possession of at least two employees practising as investment managers with CFA qualification become a prerequisite for registration as an investment manager as soon as there are over 200 CFA qualified individuals in South Africa.

### **7.6.14 Stockbrokers' commissions**

The costs of brokerage are not currently properly monitored, being netted off in the buying and selling of shares and seldom reported to trustees. Myners suggests that brokerage should be for the account of the investment managers to give them the incentive to reduce costs. This is obviously appropriate for “research and information” fees. It is less so for trading costs as it will inevitably lead to a less active investment market.

#### **7.6.14.1 Recommendations**

The Committee recommends that:

- All charges, including stockbrokers' are disclosed in the annual accounts of the retirement fund.
- Stockbrokers be required to offer execution only services to retirement funds, and charge separately for research.

### **7.7 Administration costs and rationalisation**

The costs of administration are low for self-administered and public sector retirement funds. For the private sector, costs of investment are 0,2 per cent of assets annually, while other costs account for some 2,5 per cent of contributions. Government fund charges are even lower. These are low by international criteria.<sup>13</sup> Underwritten funds are more expensive because they are smaller and require additional marketing expenses. Individual retirement annuities and endowment policies are more expensive again as there is even more administration and because marketing costs are greater. If investment costs are also 0,2 per cent of assets, the FSB reports suggest that administrative and selling charges amount to some 25 per cent of premiums.<sup>14</sup>

Unit trusts have, until recently been less expensive. Until charges were deregulated in the mid-90s, charges were 0,5 per cent of assets per annum with a maximum of 6 per cent of contributions. Deregulation has allowed charges to rise to as much as 3,5 per cent of assets per annum if the unit trusts are held indirectly.

Keeping charges low, or rather ensuring value for money can make a difference of 20 per cent or more to final pension payouts. Charges will be kept low if administration is efficient and marketing or distribution costs are kept low. Efficiency will be enhanced if there is competition in service provision, but competition requires greater marketing costs.

There may be possibilities of achieving cost savings in the South African environment through both economies of scale and the savings of marketing costs. The latter will be possible if membership of funds is compulsory. Group retirement arrangements are less effective for smaller employers. Multiple employer schemes offer an alternative.<sup>15</sup> Umbrella schemes, offered by commercial institutions, require significant marketing costs.

Industrial schemes appear to offer better protection to members and value for money. They can be initiated by employers, unions or government. Where industrial schemes are not available, thought could perhaps be given to regional schemes, where it will be easier for trustees to meet.

### **7.7.1 Recommendation**

The Committee recommends that umbrella funds be required to have elected trustees. In addition, responsibility for rationalising the over 11 000 retirement schemes be left in the hands of trustees. It is further recommended that provincial governments, together with unions and local business organisations and investigate the possibilities of establishing regional funds.

## **7.8 Taxation**

It is widely believed that the current ETT tax structure (tax exempt contributions, tax on income, tax on benefits) be maintained.

Simplicity is a key issue. Most importantly, it is suggested that the Income Tax Act apply identical tax rules to existing pension, provident and retirement annuity funds.

### **7.8.1 Taxation of contributions**

The current limits on deductibility are 15 per cent of taxable income for retirement annuity funds, 7,5 per cent from the member for pension funds and 20 per cent from the employer for both pension and provident funds. A combined limit of anywhere between 15 per cent and 27,5 per cent could therefore be justified.

The value of contributions to DB funds would have to be determined annually so they can be included in this allowance. Applying a limit strictly to each member would render a significant portion of the contribution non-deductible. This is because contributions in respect of each member fluctuate greatly depending on their age and latest increase. A more generous approach would be to permit the contributions for the whole fund to be seen as one. If this is permitted, then higher accrual rates for groups of employees such as senior managers will have to be prohibited.

### **7.8.1.1 Recommendations**

The Committee recommends that:

- Total deductible contributions should be limited to 20 per cent of the employee's taxable income.
- The allowance for arrear contributions should be scrapped as representing an unnecessary complication.

### **7.8.2 Taxation of income**

The taxation of investment income goes broader than retirement fund taxation, although it again has to be emphasised that retirement funds provide the bulk of funds in investment markets—and so their needs require particular consideration. A few points can be made.

- It is difficult for the taxation of retirement fund income to become progressive because of the pooled nature of the funds. Real investment income on retirement assets, after adjusting for inflation, is of the order of 10 per cent of personal remuneration. This is significant, but not so large as to make progressivity the major issue in retirement fund taxation.
- The objective of retirement funds is to provide a stable retirement income. Obstacles to this objective include changes to the rate of taxation on real investment earnings. These have recently occurred through changed legislation, and will in future depend on the level of inflation. (This is because tax is imposed on nominal and not real returns.)
- The National Treasury discussion document on the introduction of CGT<sup>16</sup> raises the possibility of indexing investment earnings.
- The indexation of investment income does involve complexity, but various simplifications are possible. Easiest perhaps is to exempt a portion of investment income (and expenses) from taxation. Such portion could be reviewed from time to time to take changes in inflation into account.

#### **7.8.2.1 Recommendations**

The Committee recommends that taxation of different investment instruments be investigated holistically. Some particular points are made below:

- The argument for CGT is that it closes a current loophole where otherwise taxable income can be converted into non-taxable capital gains. The National Treasury document provides the example of property speculation. In the case of capital profits on the shares of incorporated businesses, this is most obviously achieved by the reinvestment of normal company profit (as against paying it in dividends with the STC charge). The introduction of CGT means that profits will be taxed at 30 per cent when they are earned and then either at 12,5 per cent when they are paid as a dividend, or at some similar rate when they are

converted to capital gains and realised. It would be conceptually simpler to abolish both and increase the rate of tax on companies accordingly.

However, if the company tax rate were to be increased, it would also make some sense to use it as an opportunity to remove RSC and skill's levies. This would serve to simplify taxation, and reduce the cost of labour.

- This suggestion would leave windfall gains untaxed, however. Windfall gains arise when markets are uncompetitive and participants are able to extract “monopoly rents”. Examples are profits that arise from the rezoning of properties, from licences (to mineral rights, or for radio and cell phones), or profits from innovations protected by excessively generous patents or copyright. To the extent that the recent demutualisation's led to windfall gains, these can only really be justified if they arose from uncompetitive markets.
- The demutualisation levy provides an appropriate model for the taxation of windfall gains. If windfall gains are significant, government is justified in introducing measures either to restore competition, or to impose ad hoc taxes to reimburse the public. The large fees levied for cell phone licences in some countries provide another example of the acceptability of this approach. In this manner, alternative approaches to tax windfall gains may be found.

### **7.8.3 Taxation of benefits**

Tax reform is required because the current tax position encourages lump sum withdrawals, lump sum death benefits and the commutation of pensions on retirement. One cannot criticise people for withdrawing from retirement funds when there are tax incentives for doing so. It is inconsistent to prevent people from withdrawing most of their savings from retirement funds and then give them tax incentives to withdraw the maximum possible.

The Katz Commission recommended a progressive taxation of the value of benefits at retirement, which could then be used to purchase voluntary annuities. This suggestion was largely un-researched and has received minimal subsequent support. It would require funds to focus on the payment of lump sums, and create unnecessary work in attempting to minimise the tax.

#### **7.8.3.1 Recommendation**

Consideration be given to according lump sums with no special status and taxing them as income in the year in which they are received. (i.e. just add the lump sum to the year's income and pay tax at marginal rates.) This approach is simple. It also means that people would pay more tax when they take their part of their benefits in a lump sum. It encourages them to take it in smaller monthly amounts, which is regarded as generally preferable by the Committee.

## **7.9 Benefits**

Most retirement funds were DB pension funds until the mid-80s. They provided some protection against inflation, but provided poor withdrawal benefits.

Most individuals in the private sector are now members of DC provident funds. These funds were attractive to unions and members for a number of reasons. They allowed for more democratic control, offered better withdrawal benefits, greater ease in avoiding the old-age assistance means test, and did away with complicated cross subsidies. Employers also welcomed the change as they were freed from underwriting the risks of DB funds. These arise from investment guarantees, but also from the increase in the AIDS-related claims that were foreseen.

Debate on the future of the civil pension funds (chiefly the Government Employees Pension Fund—GEPF) centre on whether it should be converted to PG or changed to a DC fund. PG is contrasted with funded schemes, in that no assets are held to cover liabilities. The benefits are financed by current contributions.

The following section briefly examines the various issues that require consideration in retirement fund benefit design, and suggests a design incorporating the best of DB, DC and PG arrangements.

### **7.9.1 Simplicity**

Evidence from around the world is that the average person finds the design of retirement arrangements too complicated to understand.<sup>17</sup> The consequences are that adequate planning is difficult, and that people fail to attain the financial security in old age that they would have wanted.

The problem can be addressed by consumer education, and the structuring of institutions that can give adequate advice. Education is discussed in the section below on consumer protection. A simplification of institutional arrangements can facilitate understanding.

### **7.9.2 Leakage and unemployment**

Related to the question of compulsory membership is the issue of the preservation of existing pension accumulations.

### **7.9.3 Retirement funds used for unemployment**

Almost R20 billion annually “leaks” out of the retirement fund sector through the payment of cash withdrawal benefits. It is inconsistent to compel workers to belong to retirement funds and then allow the benefits to be paid out in lump sums before retirement.

The counter argument, which provided an important motive for the national strike in the early 80s, is that the withdrawal benefits provide an important and irreplaceable extra buffer in times of unemployment.

The amounts paid by retirement funds on withdrawal dwarf both the benefits paid by the UIF and severance payments. A retirement fund that refunds contributions, plus interest equal to the rate of salary growth on withdrawal, and that requires contributions of only 6,7 per cent of income, will

always pay more to an unemployed person than the UIF. The difference increases as the period of membership grows.

### **7.9.3.1 Recommendations**

The Committee recommends that retirement funds rules be amended so that benefits may be transferred on a member's withdrawal to their new employer's fund or a retirement annuity fund of the member's choice—if the member remains in employment in the formal sector. If no longer employed in the formal sector, monthly payments no greater than 60 per cent of income before becoming unemployed, be permitted once the member is no longer entitled to further UIF benefits.

On rejoining the formal sector, if the member is not able to rejoin their previous fund, then the full members' interest should be transferred to their new employer's fund or a retirement annuity fund of the member's choice.

### **7.9.4 Settling debts**

Members may also withdraw benefits from funds in order to settle debts with formal or informal moneylenders. This practice creates difficulties—especially amongst the relatively higher income earners for which compulsory pension provision is recommended. The solution could lie in penalising lenders who appear somewhat reckless in encouraging borrowers to become over-committed.

Government, as employer, is currently changing the rules for processing salary stop order deductions. The Banking Council is in a similar process as regards bank debit orders. The problem may be that many employees have over-committed themselves financially. It would be possible, but inordinately expensive, for over-committed borrowers to be sequestered and their loan repayments reduced.

A simpler approach could be to limit the maximum deductions that can be made for the repayment of loans. Such an approach should be co-ordinated between banks and employers—and extended to all employers.

#### **7.9.4.1 Recommendation**

The Committee recommends that legislation limit the proportion of income that can be deducted by employers and banks for loan repayments.

### **7.9.5 Lump sums versus pensions**

A question related to leakage is the lump sum benefits that are paid by provident funds at retirement. Restricting leakage at retirement is surely as important as restricting leakage before retirement. Three alternative approaches might be used:

1. The current approach adopted for pension and retirement annuity funds is to allow commutation of one third of the pension. This has the advantages of simplicity and continuity.
2. A second alternative is to allow commutation of that pension that exceeds some relatively arbitrary level that is deemed sufficient for a reasonable retirement. There would, however, be difficulties in determining the amount, which would probably be too high to allow commutation for lower income earners.
3. A third alternative would be to allow commutation of that pension that exceeds some minimum (say 40 per cent of their pre-retirement income). This would allow greater flexibility to those who had contributed more, or for longer than the minimum.

One advantage of requiring funds to pay pensions will be that funds would be encouraged to adopt more appropriate investment strategies. The tendency, currently, is for funds to shorten investment horizons as workers near retirement in order to pay a more predictable lump sum. The lump sum is frequently intended to buy an annuity at rates of interest then available. This approach introduces an unnecessary additional investment risk. The member's life expectancy at retirement may well be 20 years or more. This means that the appropriate investment strategy remains long term until the member is much older (75 or more). The intention should be rather for the pension to be as stable as possible, with the value of the lump sum fluctuating with market values.

#### **7.9.6 Protection against inflation**

If funds are to be compelled to pay pensions, it is clear that the only suitable pension is one that is protected in some way against future inflation. Pensions may well be payable for 30 years or more, over which period it is clearly necessary to allow for many unexpected changes in the price level. Pensions that increase at a guaranteed rate will provide inadequate protection to the extent that inflation exceeds the guaranteed rate, and too much protection to the extent that inflation falls below the guaranteed rate.

Notions imported from OECD countries into South Africa have tended to downplay the importance of adjusting benefits for inflation. Large inflation-linked state benefits, lower rates of inflation and the more stable socio-economic outlook of OECD countries explain these views. They are, however, inappropriate in South Africa, where private pensions provide a greater proportion of post-retirement income and inflation has historically been at higher levels.

It is not currently possible for a retirement fund to guarantee to increase pensions in line with inflation. Providing such a guarantee (by the funds, employers or government) would introduce unacceptable risks of insolvency. It is possible, however, to aim at providing an inflation-protected pension, by appropriate funding and investment policies.

Increases in pensions depend on the investment and mortality experience. In most instances, the increases are placed within the discretion of the trustees. The Pensions Fund Amendment Bill (2001) is *inter alia*, intended to prevent employers from influencing this discretion in order to create a surplus that they can access. However, trustees who are active members may have a conflict of interest when deciding on pension increases. Regardless of how the assets are divided, lower increases now should mean the possibility of larger ones later.

This problem can be resolved by including a mechanistic rule in the rules of the fund as to pension increases. Alternatively the decision can be referred to a neutral arbitrator. Both alternatives have their drawbacks.

### **7.9.6.1 Recommendation**

The Committee recommends that all approved retirement funds be required, in their rules, to provide pensions that are intended to compensate for future inflation and that are able to adapt to the inflation rate. The rules must provide a specific mechanism for deciding on pension increases: either a formula or the use of a disinterested arbitrator.

## **7.9.7 The ratio of benefits to contributions**

### **7.9.7.1 Current position**

DB funds maintain the ratio of benefits to final salary rather than benefits to contributions. Employers adapt their contributions to make up for deviations in investment results from those estimated.

The objective is to maintain the members' standard of living as they retire. In many instances, however, final salary may not be a particularly good guide of overall living standards. Data on income progression over the lifetime frequently show a significant fall off as retirement approaches. Older people also have high levels of savings, which suggest that those whose income does not reduce are not consuming all their income.

PG funds function similarly, although their contribution rates are also influenced by projected demographic changes. In DC funds, the benefits are only determined at retirement and depend on investment returns.

### **7.9.7.2 Theoretical objectives**

The following, partly conflicting, objectives would seem to be widely accepted:

- The ratio should be actuarially fair in that it would consider the relative costs of people's benefits, and depend on actual investment returns.
- The ratio should be as predictable as possible—when considered in real terms.

- It would also seem desirable for pensioners to participate in any overall change in the standard of living in the country.
- The ratio should be as objectively determined as possible, and certainly not subject to the discretion of interested parties.

### **7.9.8 Cross subsidies**

Actuarially fair pension benefits are such that the present value of the contributions are equal to the present value of the benefits. Actuarial fairness can be determined *ex ante*: making reasonable assumptions about the future, or *ex post*, using actual experience.

Pure DC funds are actuarially fair *ex post*. This is one of their main attractions. Investment returns are, however, volatile and largely dependent on chance. Members may feel that significant differences in benefits between people with similar service but retiring at different times are unfair. (Benefits may differ by as much as 30 per cent over a year.)

Most DB funds are not actuarially fair. They normally pay higher benefits to the married, and often to those with children. Those where the benefit is based on final average salary give better benefits to those whose salaries increase the most in their last years of work. More skilled people are paid growing incomes than manual workers, and so the poor and unlucky subsidise the rich and lucky.

The cross subsidies can be significant and are difficult to understand. An increase in salary has an impact on the value of expected pension that may be as much as 10 times larger for people with long service and close to retirement. A lower than expected salary increase gives rise to a reduction in the expected value of pension that may mean that the company effectively makes a negative contribution to the employee's retirement fund.

This cross subsidy is increased further in pension schemes because higher income people appear to live longer.

The existence of these largely opaque cross subsidies is such that it is difficult to recommend ongoing support for DB final average schemes. It would be inappropriate for them to be prohibited, but greater transparency is clearly needed.

#### **7.9.8.1 Recommendation**

The Committee recommends that all funds be required to inform their members annually of the present value of contributions made by employers on their individual behalf, and of the increase (or reduction) in value of their retirement benefits.

### **7.9.9 Transfer values**

DC retirement funds allow for the simpler calculation of transfer values. The transfer values ought to allow for the market value of the underlying assets, making appropriate adjustments for the value of any smoothing mechanisms.

The same applies to transfers from DB funds. On this score, the Pension Fund Amendment Bill presently before Parliament offers similar rules for DB funds. A problem that remains unresolved by the Bill is that of members resigning from a fund and withdrawing less than the present value of their future benefits. The Bill merely provides for the member's contributions plus investment returns.

It is clearly desirable that the pension accumulated by retirement fund members over their careers should not be reduced if they change jobs regularly. Any losses that occur on a job change not only reduce the member's ability to maintain themselves in retirement, but also limit labour market flexibility.

An argument for a penalty for short-term withdrawals is sometimes made on the basis of compensation to the employer for any investment in the training of the departing employee.<sup>18</sup> This argument does not apply unless the fund is a traditional DB balance of cost fund. In DC funds, profits on withdrawal accrue to other members—which is difficult to justify. It is suggested that other arrangements need to be made to recover training costs, and that any penalty imposed is contrary to public policy.

#### **7.9.9.1 Recommendation**

The Committee recommends that retirement funds not be permitted to levy any penalty on any withdrawals. As this would represent an increase in the benefits, funds should be permitted to either increase contributions or reduce other benefits appropriately.

### **7.10 State old-age assistance**

#### **7.10.1 Coverage**

The state old-age assistance grant of R570 monthly is paid to some 80 per cent of men over 65 and women over 60. Despite being means tested, this provision implies almost universal coverage.

#### **7.10.2 Administrative delays**

Administration has recently improved, but, as discussed elsewhere in the full Committee report, the Committee received a number of representations on its ongoing inadequacy. Of particular importance is the Department's apparent practice of not paying arrears instalments. It is inevitable that payments may be stopped in error, or if the beneficiaries fail to provide evidence of existence

within a given time period. Errors should, however, be corrected as quickly as possible and beneficiaries reimbursed.

### **7.10.2.1 Recommendation**

The Committee recommends that arrears payments be made from the date on which the benefit would have been due regardless of any administrative delays.

### **7.10.3 Level of Social Old Age Pension(SOAP)**

The Smith Committee showed that the level of the pension compares reasonably (when expressed as a percentage of GNP per head) internationally. At 18 per cent of the average wage, and 71 per cent of wages per capita, there is not much room for increases.

As a percentage of GDP, the amount has apparently been reduced over the past 5 years from Smith's 1,5 per cent in 1995 to 1,2 per cent in 2000. The Smith Committee predicted an increase of 2,5 per cent per annum in the number of beneficiaries annually—more or less average population growth. The drop may be the result of better statistics and administration, increases lower than inflation and bigger pensions payable from retirement funds. It happened, however, in spite of a reduction of the impact of the means test from 100 per cent to 50 per cent of other income.

The determination of the level of pension will always be contested. That it is used in many families to support more than the direct recipient is used both to argue that it should be increased, or alternatively reduced to allow for more directly targeted payments to the needy.

#### **7.10.3.1 Recommendation**

The Committee recommends that the following considerations should be balanced in determining the level of state assistance:

- Many pensioners rely for most of their income on the grant, and will find it traumatic to reduce their living standards if it is reduced in real terms. The real level of the grant should therefore be maintained if possible.
- The level of the grant should be related to an objective benchmark, such as an official poverty datum line or inflation.

## **7.11 Consumer protection issues (pensions, life and disability insurance)**

### **7.11.1 Excessive sales and lapses, but few complaints**

The sales effort of the life assurance industry is such that there can be few remunerated adults in South Africa who have not at some stage taken out life policies. FSB statistics show that some 3,4 million policies with renewable annual premiums of R7 billion (and single premiums of R22,5

billion) are sold annually. This implies that the average worker buys a policy every 3 years for an amount equal to 6 per cent of his or her remuneration.

The Committee has not been able to obtain definitive statistics, but the picture that emerges is that about half the working population appear to have little insurance, while the other half is over insured. Data from AMPS is that 52 per cent of employed people report having no insurance (although they may well be covered without knowing it), which means that the other 48 per cent are paying a very high proportion of their income in premiums. This accords with recent press reports indicating that some 300 000 civil servants who have life policies have an average of eight policies, and anecdotes as to people who have nothing left of their income after deductions (mainly policies).

When the amounts already being saved for retirement through retirement funds are also taken into account, this appears to indicate an excessive use of life policies by many. It helps explain the high average lapse and surrender rates of 29 per cent and perhaps 5 per cent respectively. Such high lapse rates suggest that many policyholders fail to receive value for money. On the other hand, very few of the 900 000 owners of lapsed policyholders complain. Various explanations can be given.

A proportion may technically be called lapses but not cause any loss to the policyholders, because they are cancelled before the first premium is paid.

- Intermediaries well known to the policyholders, who are reluctant to complain about the sale, sell policies. The high commission content of the sale gives an incentive to the salesperson to develop such relationships and foster such reluctance.
- Few people fully understand the nature of the contracts, and so fail to appreciate the poor value for money offered. This explanation is given by the large numbers of life policies remaining unclaimed on the death of the insured. Statistics are notoriously difficult to obtain, but the latest notified deaths from the life offices seems to produce excessively low black mortality rates, and an estimated 10 per cent or more of the policyholders of the recently demutualised life offices have failed to claim their shares.
- Many people use life assurance as a mechanism to commit themselves to saving, and are prepared to pay for help in doing so. (Laibson, Repetto and Tobacman, 1998.) The losses on lapse are thus seen as a necessary part of a savings discipline.

Policyholders, particularly those informally employed, face fluctuating incomes and expenses that make it difficult to meet fixed commitments. Urging them to “save” by taking out a policy is unhelpful. Fixed premium savings contracts are necessarily the first “expenses” that are cut.

Saving first requires a reduction in consumption, and then the accumulation of a short-term emergency buffer before long-term commitments can be made. Even then it is normally unwise to commit to level contributions over an extended period. Fixed premium insurance contracts are, therefore, inappropriate for most people.

It is suggested that that the current situation is unacceptable and that some action is required to give greater protection to consumers.

### 7.11.2 Commissions

High rates of lapse are frequently ascribed to the use of commissions in the distribution of life assurance.

It is widely recognised that the payment of life assurance commission requires controls. Commissions are currently capped by law in South Africa. Legislation has been proposed to require such commission to be disclosed, for all financial intermediaries to be registered with the FSB, and for the caps then to be removed.<sup>19</sup> This change (although with more stringent training requirements for registered advisors) has been made in many jurisdictions internationally. It has, however, usually led to an increase in overall costs. The lifting on restrictions on unit trust charges in South Africa, for instance, has led to costs more than doubling.

It is suggested that the payment of commission for advice of this nature is fundamentally flawed.

- The major problem is that the advisor (often called a “broker”, “consultant” or “analyst”) faces a conflict of interest in that the advice given cannot be independent of the commission payable. Such a conflict is not normally permitted under common law. Disinterested advice is only possible if the fee for the advice is independent of the actions that may follow the giving of the advice.
- Recommendations are frequently (and deceptively) couched as “investment advice” by people with inadequate skills. Such advice is invariably unnecessary given the relative efficiency of investment markets. There is evidence, however, even with general market efficiency, that inexperienced advisors tend to recommend the following of trends and “overshoot”. This has both an adverse effect on the investor’s returns, and a destabilising effect on investment markets.
- In the case of annual premium individual contracts, significant first year commissions go together with long fixed-term commitments, which the previous section suggested to be inappropriate.
- The commission structure also distorts the type of policy sold. Ninety per cent of cases normally require life cover of a regular income to replace the financial contribution of the deceased to the family. What is normally offered is lump sum cover that does not reduce with earning capacity. The lump sum is mainly a tax-related distortion, but the shape and term of the cover are frequently driven by attempts to maximise commission.

None of the problems can be addressed merely by the limitation or disclosure of commission. It appears necessary to implement the common law principle and to prohibit the offering of advice that will be remunerated by commission.

It can be argued that people will thereby be deprived of any advice. It is suggested, however, that modern technologies lend themselves to the development of affordable and independent financial advice.

### **7.11.2.1 Recommendations**

The Committee recommends that the Long-term Insurance Act be amended to prohibit the payment of commissions from any third party to those who purport to advise the public on matters pertaining to investment, retirement and life assurance. Such a prohibition would be disruptive if introduced in too short a time span. It is therefore suggested that it be phased in over a six year period: first for investment advice, then retirement advice and finally advice pertaining to life and disability insurance.

In order to be effective, such prohibition will have to be controlled. Criminal sanction would be inappropriate, but brokers found guilty could be required to pay twice the level of commission received to the policyholder—plus costs. Life insurers involved should be required to make up shortfalls created by the bankruptcy of the purported advisor. Life assurers who pay such commissions should have their licences to sell new business revoked.

### **7.11.3 Voluntary additional cover**

The life and disability cover offered compulsorily may be inadequate for many. This leaves considerable scope for the sale of individual policies.

It might be argued that individual life assurance policies that conform to the conditions that will be applied to compulsory cover do not really require disinterested advice. The cover will be shown as replacement for monthly income, and completely cover all contingencies. It will be easy for policyholders to know that they are covered as the benefit can be expressed as a percentage of their income.

This approach is equivalent to the “CAT” marked products now being introduced in the UK for stakeholder pensions. CAT marked contracts offer Charges, Access and Terms that represent good value for the contract concerned.

#### **7.11.3.1 Recommendation**

The Committee recommends that commission could continue to be payable to agents of an insurer, who make it clear that they are selling policies, not giving advice. Such contracts should, however, only offer insurance benefits, and have no investment content. Restricting charges might also be

considered. For simplicity of administration, contributions from such contracts should not be tax deductible and benefits not be subject to tax.

#### **7.11.4 Competition**

The life and disability insurance industry shows signs of inadequate competition.

- The provision of retail insurance and financial services is not subject to much international competition as the services cannot be imported. A history of encouraging takeovers in the insurance industry, and significant inter-industry investments mean that the combined industry is currently fairly concentrated. The largest two insurers control two of the largest four banks; the other two banks control the next two largest insurers. The four groups have over 80 per cent of both industries.

These concentrated controlling interests also represent an increased risk to the financial system. It is also possible that capital reserves are effectively used twice. Requiring a reduction in these controlling interests can therefore be justified on prudential and competitive grounds. The SARB and the FSB are apparently involved in discussions about the regulation of conglomerates.

- Life insurers offer a variety of products that are difficult enough to compare, and frequently refuse to publish their prices and performance. Expense deductions are frequently not even reported to policyholders. Competition would be enhanced if full disclosure of expense deductions and bonus or investment history to policyholders is made mandatory on an annual basis.<sup>20</sup> The Long-term Insurance Act could be amended accordingly and the FSB could require enough information itself to be able to provide tables of comparisons to the public.
- A suspicion exists that, while the industry has an enviable international reputation for innovation, there is little effort to understand and meet the insurance needs of poorer people. The industry was perceived as quick to exclude HIV positive individuals from life and disability cover, but slow to offer expensive policies that they could afford. Cheaper life cover for the rich and healthy came many years before cheaper annuity rates for the sick, while better annuity rates for the poor have not materialised. It may, however, be that the commission system has been more of an inhibition on product development than lack of competitive pressure.

There are gaps in the market that remain a concern. In the annuity market particularly, it is all but impossible to get appropriate inflation linked or protected annuities, particularly ones that make adequate allowance for the tax and health status of the annuitant. Few offices offer policies to those who are HIV positive. Moreover, it appears that no life insurer offers double-endowment type arrangements that would significantly reduce the cost of cover for them.

- As mentioned above, the costs of unit trusts investments have escalated significantly since caps on charges were eliminated. It is doubtful whether the greater choice available to investors, as a result, compensates them for these increases. A more recent development that illustrates the lack of competition is the increase in costs of “living annuity” contracts. The annual investment costs have risen to a minimum of some 2 per cent, and frequently include a non-cancellable “trail” commission payable to the introducing intermediary. The suggested recommendations on commission would prohibit such commission if the intermediary purported to give advice, but the concern is that costs will continue to rise.
- Another indication of lack of competition is the low surrender values sometimes given to savings policies of long duration. What should be paid is a reasonable estimate of the present value of the benefits calculated at going market rates. If this was not made available, an informed policyholder would sell the policy—if there were a market in policies.

#### **7.11.4.1 Recommendations**

The Committee recommends that government investigates further steps to increase competition. In this regard, government could consider the following:

- It would be desirable to facilitate the entry of burial societies into the formal market. Current legislation apparently discourages the mutual form of corporate governance that served a large section of the market well for many years. They were undoubtedly financially viable, and tended to focus their energies more on the expansion of their market shares (and therefore the market) rather than ostensible profitability. (Ostensible in that it is apparent that the management of financial institutions, in their public statements, follow financial rules of thumb that do not maximise profits.) It would perhaps promote competition if these obstacles were removed.
- Thought could be given to requiring the major banks and insurers to divest themselves of their cross holdings. Further mergers of companies with more than 5 per cent of the market be prohibited.
- In a number of other countries, government itself has entered the insurance market as a competitor. This could be done by buying an existing company or starting a new one. Such an institution might also incorporate a mutual ownership structure. The marketing strategy would be to target lower income groups, perhaps using the post office as a collecting agent.

#### **7.11.5 Annuity markets**

It is frequently argued that life offices are exposed to anti-selection in the sale of annuities and this makes the market inefficient in the pricing of annuities. Profit or security loadings of 10 per cent and more are reported, but lower income people with a lower life expectancy are particularly poorly served.<sup>21</sup>

Anti-selection does not occur when the annuities are compulsory. South African statistics are not available, but UK experience shows that compulsory annuitants have lower mortality than the rest of the population. Ill health is responsible for a large proportion of early retirements particularly, and the mortality of annuitants is considerably higher than average.

It is widely accepted that the potential risks associated with mortality improvements are such that they cannot readily be absorbed by the private sector. This is because they are potentially extremely large and stretch over a number of decades. Life Offices are currently particularly sensitive after recent losses from this source in the UK of some £10 billion during the late 90s (although some of this loss is interest rate related). This follows large losses in other European countries during the 80s.

This is why increasing annuities should be structured in a “with profit” manner. Unexpected mortality losses can be passed on to pensioners by reducing increases in pensions. The reductions are not likely to be so large as to cause great hardship.

With-profit annuities are not readily available in the current South African market, but it is hoped that the effective banning of level annuities will have the effect of encouraging their wider availability.

Consideration could be given to government itself offering inflation-proofed annuities. The state is in a better position to absorb the risks, and would be able to offer better rates to those with lower life expectancies.

#### **7.11.5.1 Recommendations**

The Committee recommends that:

- A government-owned life office could promote suitable annuities.
- Government itself could issue annuities on a strictly market-related basis that makes allowance for the lower life expectancies of lower income people.
- Life annuities sold by life assurers should be CAT marked to ensure value for money.

#### **7.11.6 Unclaimed benefits**

There is evidence of significant unclaimed benefits in retirement funds<sup>22</sup> and insurance companies.

- Pension funds with deferred pensions experience very low levels of mortality claims for survivors’ benefits, and many people do not claim their pensions at retirement age.
- Life assurers experience unexpectedly low levels of claim on paid-up policies.
- Many policyholders of the demutualised companies have failed to claim their shares.

These benefits are presumably unclaimed because the beneficiaries are unaware of the existence of the benefits or unable to exercise their claims. They will, in many instances, be poor and illiterate.

In the absence of legislation, unclaimed benefits are likely to revert ultimately to the sponsors of the retirement funds, or the shareholders of the life offices. This is inappropriate as they are, in some measure, responsible for the factors that have led to these benefits remaining unclaimed.

#### **7.11.6.1 Recommendation**

The Committee recommends that the FSB co-ordinate a national initiative to find the missing beneficiaries. This should apply to all deferred pensioners, policyholders no longer paying premiums and shareholders not receiving dividends. The campaign should include extensive advertising in all media, and a collation of the records of the different retirement funds and insurers. Where there is no address, and no record of the beneficiary in the records of the Departments of Home Affairs, Social Development or SARS, then the benefits could be legally forfeited to the state. Provision can be made for funds and insurers to have recourse in the event of a beneficiary subsequently claiming their benefits.

#### **7.11.7 Education**

It is commonly argued that the main issue is one of education. The objection to this position is that knowledge is of little value if the institutional environment prevents consumers from obtaining appropriate benefits and value for money.

Glass (2001) makes the point that there is often very little difference between “education”, “advice” and “sales material”. A point not made is that the high advertising expenditure of the industry gives it some influence over editorial policy and tends to ameliorate criticism.

This is not to argue that education is not required, but that it should be provided independently. It should attempt to make participants/members particularly sensitive to potential conflicts of interest.

##### **7.11.7.1 Recommendation**

The Committee recommends that education is essential for consumer protection, and that education should be provided independently of service providers. In other words, it should not be provided “free” as it has the same impact as “free” commission.

#### **7.12 Other issues**

##### **7.12.1 Maximum retirement age**

The National Consultative Retirement Forum sub-committee recommended increasing the maximum retirement age to 75.

One objection to increasing the maximum retirement age is that older people occupy jobs which younger unemployed people would otherwise be able to fill. On the other hand, it is often suggested that a shortage of managerial skills inhibits the creation of jobs. Both arguments are probably valid in different circumstances. There are, however, other ways of encouraging people to retire to make room for younger people, while older people can still be employed even if they are drawing a pension.

The main effect of an increase in retirement age would be to allow for greater tax planning and the deferral of income tax. This would largely benefit the wealthy.

#### **7.12.1.1 Recommendation**

The Committee recommends that the maximum retirement age be left at 69.

#### **7.12.2 Cession of benefits**

Retirement fund benefits are currently protected against members' creditors, except for housing loans. If compulsory membership and preservation is to be maintained, this protection will have to be preserved.

##### **7.12.2.1 Recommendation**

The exclusion for housing purposes should be phased out. It clearly adds to the complexity of retirement fund design. It also appears that few funds actually ensure that the debt is used for housing purposes. It is suggested above that members should be permitted to redirect their savings to a house if they are under 40. Over that age, arguments for compulsion become stronger and the current exception seems inappropriate.

#### **7.12.3 Divorce**

Widows, divorced spouses and their children frequently have difficulty in accessing their fair share of retirement fund benefits. One obstacle is that the Divorce Act, 1979 allows for the withdrawal benefit from the retirement fund to be included in the apportionment of assets. Another is that lump sums paid on retirement are spent by the member on himself.

Section 37C of the Pension Funds Act (which requires retirement fund trustees to divide death benefits amongst the dependants) is administratively cumbersome. A simpler and fairer division of the benefits between dependants is desirable. Suggestions are currently being debated by the industry.<sup>23</sup>

##### **7.12.3.1 Recommendations**

The Committee recommends that:

- Each spouse should accrue separate rights to retirement benefits. This will be easier if the disclosure regime suggested above is implemented. Orders for maintenance and division of an estate on divorce would also be easier to implement.
- The requirements of section 37C can be simplified if benefits are paid as annuities rather than lump sums.
- The Pensions Funds Act should provide for the trustees' duties in section 37C to be delegated to other competent parties.
- The duties should be limited to, for instance, annually asking active members to list their dependants, to inspect deceased member's previous year's bank statement for regular payments, and to visit the member's main residence after business hours to ask about possible dependants.
- Dependants who are overlooked in the allocation of benefits should have a claim on those who were paid and not on the fund—except for negligence on the part of the Fund.

Incentives to report the existence of a non-earning dependant would be created if non-earning spouses could transfer their rebate to the earning spouse as suggested above.

#### **7.12.4 Forum shopping**

Retirement fund members can currently complain to the Life Assurance Ombudsman, Pensions Fund Adjudicator, the Labour Court, the FSB or the High Court—or to a range of bodies representing professional advisors. The view of the Pensions Fund Adjudicator<sup>24</sup> is

that South Africa requires a single, specialised, well funded, properly staffed Pension Complaints Tribunal with exclusive jurisdiction over all pension fund disputes arising from whatever quarter and in relation to all pension fund matters. Only then shall we develop a coherent jurisprudence and a quality investor protection service. Until then, we shall continue to be dogged by formalism, technical point taking and wasteful skirmishes of the kind, which inevitably accompany the existence of competing and overlapping jurisdictions.

A major source of potential problems arises from employer discretion over increases in benefits. Such discretion is intrinsically undesirable. It is hoped that regulations limiting discretion will reduce the likelihood of matters falling under the jurisdiction of the Labour Court.

There is, however, a case for the office of the Pension Fund Adjudicator to absorb the Life Assurance Ombudsman. It is clear that the independence of the former makes the office a far more formidable defender of the rights of the consumer than the Life Assurance Ombudsman has been. The FSB would then fund and oversee both, and could specifically excuse itself from the complaints.

#### **7.12.4.1 Recommendation**

The Committee recommends that the adjudication function be considered as part of the overall development of a Social Security Tribunal/adjudication structure for social protection.

#### **7.12.5 Surpluses**

The Pension Fund Amendment Bill currently proposed for the treatment of retirement fund surpluses is generally consistent with the suggestions in this report. It provides for minimum transfer values and pension increases that will prevent surpluses being unfairly built up by employers. It also provides appropriate mechanisms for the allocation of surplus to members and employers.

A few additional issues could perhaps be addressed:

- Voluntary withdrawals should lead to no penalties.
- Employer guarantees of an adequate investment return on assets should be set out in explicit contracts with the retirement fund. This would mean that the usage of future surplus will be less of a source of direct conflict between employers and funds.

#### **7.12.5.1 Recommendation**

The Committee recommends that these issues be considered if not included in the legislation eventually passed.

#### **7.12.6 Taxation of endowment assurances**

Many people use endowment policies to provide a retirement income. One legal view is that the monthly amounts drawn after a claim or on maturity are taxable. If so, it would mean double taxation as the insurer is already paying tax. If not, it provides a tax loophole for higher rate taxpayers who can reduce their tax rate from 42 per cent to 30 per cent.

There are a number of ways to resolve this problem.

- i) Endowments might be permitted to make a limited number of benefit payments; this would probably lead to an inefficient splitting of endowment policies.
- ii) The tax rate on life assurance could be increased, but this would make it less to low-income people.
- iii) The gain on endowments could be taxed at the difference between the individual's marginal rate and the life office rate, but this would be administratively cumbersome.
- iv) The whole proceeds could be tax free. This might be seen as a further concession to richer people. In fact, it represents a concession to those who cannot afford proper advice, as the wealthy are highly unlikely to pay tax on such gains.

### **7.12.6.1 Recommendation**

Consideration should be given to the entire proceeds of endowment assurances being tax free—i.e. option (iv) above. This is also the simplest option administratively.

### **7.12.7 Institutions for the frail**

Demographic changes are making long-term care a particular problem. Improvements in medical technology are leading to unprecedented reduction<sup>25</sup> in the mortality rates of older people, who require more care as they age. Smaller families and more women in paid work, mean fewer women (who have traditionally provided care) are now available to do so.

While it maybe desirable for people to remain outside formal institutions for as long as possible, increasing numbers will inevitably require such care. Many who require admittance are unlikely to be able to afford the estimated R4 000<sup>26</sup> monthly costs. State involvement is, therefore, inevitable.

Old-age homes for whites were previously subsidised at an unsustainable level. Subsidies from the Department of Social Development are being reduced, but some care should be taken to ensure the ongoing viability of non-profit organisations operating in this area. Subsidies can only be justified if the individuals concerned are frail, have insufficient funds to support themselves and have no relatives to support them.

It would be desirable for pension funds to pay at least enough for frail care when their pensioners need it. The cost of this would have to be borne by reducing the normal pension, but this would only apply to pensions lower than the R4 000, say, required to pay for frail care.

#### **7.12.7.1 Recommendation**

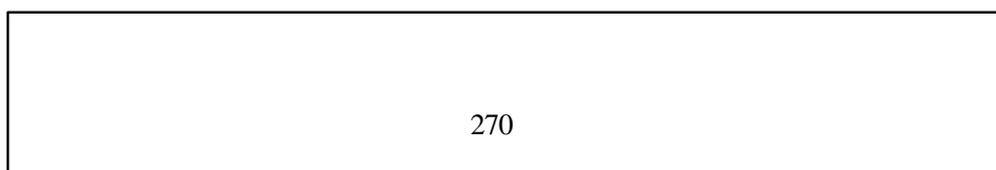
Possible options are for subsidies to be granted to frail care centres on the conditions set out above, and after appropriate audits have been conducted.

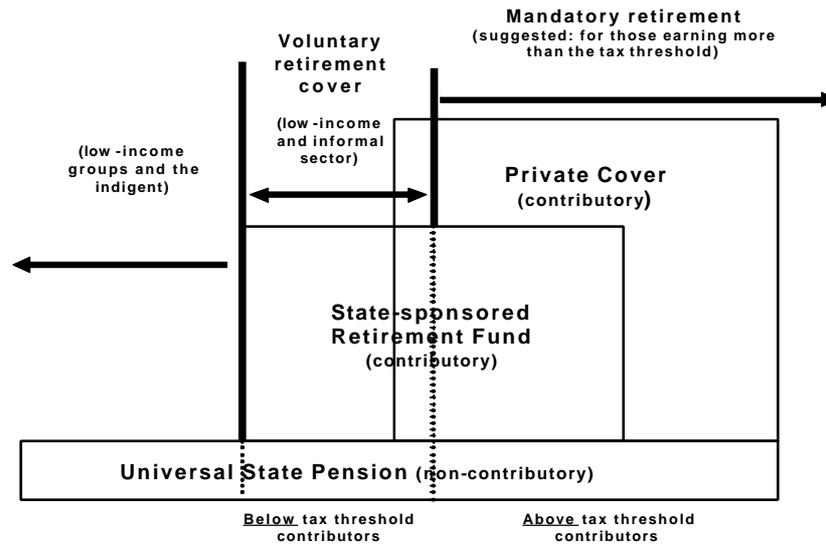
The Committee recommends that these options be further investigated by the Department of Social Development,<sup>27</sup> the Department of Health and the relevant national associations.

### **7.13 Conclusions**

The strategic framework for an integrated benefit system with regard to retirement and old age recommended by the Committee is represented in figure 7.1 below. The process of achieving a system that ensures coverage for all through contributory and non contributory environment's is essential to the future well being of South Africa.

**Figure 7.1: Proposed strategic framework for retirement provision in South Africa**





South Africa's social insurance sector is one of its economic strengths. It does, however, need to be more conscious of its social responsibilities.

The recommendations made above are intended to:

- Protect the excluded and exploited
- Ensure that benefits offered by the sector fit seamlessly with social security payments to provide comprehensive cover to all South Africans
- Provide a framework for the sector to play its proper role in investment markets and the corporate governance of private enterprise.

## REFERENCES

- Asher, A. 1998 Effective and Ethical Institutional Investment. *British Actuarial Journal* vol. 4.V:969-1027 ([www.assa.org.za/Papers/papers97/papers97.htm](http://www.assa.org.za/Papers/papers97/papers97.htm)).
- Attanasio, O, Picci, L and Scorcu, A 1998. *Saving, Growth and Investment* ([www.worldbank.org/research/projects/savings/policies.htm](http://www.worldbank.org/research/projects/savings/policies.htm)).
- Barr, Nicholas. 1998. *The Economics of the Welfare of the State*. Stanford University Press. Stanford, California.
- Berghman, J. 1997. The Resurgence of Poverty and the Struggle Against Exclusion: A new challenge for social security. *International Social Security Review* 50: 3-22.
- Beth, JM. 2000. Who Says Financial Services Integration is in the Consumer's Best Interest? *North American Actuarial Journal* 4.3: 20-24.
- Black, JM, Booth, G, Cooper, DR, Devenney, GA, Russell, GT, Singer, CG, Stewart, CM and Walton, AN A Central Discontinuance Fund for Pension Schemes ([www.sias.org.uk/papers/progold.htm](http://www.sias.org.uk/papers/progold.htm)).
- Branson, DM. 1993. *Corporate Governance*. Michie. Charlottesville.
- Case, A, Lin, I and McLanahan, I. 1999. How Hungry is the Selfish Gene? ([www.nber.org/paperspw7401](http://www.nber.org/paperspw7401)).
- Einerhand, M, Eriksson, I and van Leuvensteijn. 2000. Benefit Dependency and the Dynamics of the Welfare State: Comparing Sweden and the Netherlands. *International Social Security Review* 54.1: 3-18.
- Feldstein, M and Rangelova, E. 1998. Individual Risk and Intergenerational Risk Sharing in an Investment-based Social Security Program. NBER Working Paper No W6839 ([papers.nber.org/papers/W6839](http://papers.nber.org/papers/W6839)).
- Ferris, S. 2000. Women Making Choices. Macquarie Research Paper ([www.actuary.mq.edu.au/research\\_papers/200001\\_women\\_making\\_choices.pdf](http://www.actuary.mq.edu.au/research_papers/200001_women_making_choices.pdf)).
- Fisher, HF and Young, J. 1965. *Actuarial Practice of Life Assurance*. Cambridge University Press. London.
- Glass, RD. March 2001. Investment Education or Advice? That's the wrong question to ask! *Pensions World*: 28-33.
- Gordon, G and Getz, WS. 1969. *The South African Law Of Insurance*. Juta.
- James, E, Ferrier, G, Smalhout, J, Vittas, D. 1999. Mutual Funds and Institutional Investments: What is the Most Efficient Way to Set Up Individual Accounts in a Social Security System? NBER Working Paper No. W7049 ([papers.nber.org/papers/W7049](http://papers.nber.org/papers/W7049)).
- Kaufman, A, Zacharias, L and Karson, MJ. 1995. *Managers vs. Owners: The struggle for Corporate control and American Democracy*. Oxford University Press. New York.
- Laibson, DI, Repetto, A and Tobacman, J. 1998. Self-control and Saving for Retirement. *Brookings Papers on Economic Analysis* I: 91-196.
- Louw, JW, Carson, JA, Cuthbert, RAL, Malan, DJ, Nel, S, Scholtz, PFJ, van der Horst, JG and Le Roux, FJM. 1976. Report of the Commission of Inquiry into the Long-term Insurance Industry. Department of Finance. Pretoria.
- Myners, P. 2001. *Institutional Investment in the United Kingdom: A Review* ([www.hm-treasury.gov.uk/docs/2001/myners\\_report0602.html](http://www.hm-treasury.gov.uk/docs/2001/myners_report0602.html)).
- National Treasury. 2001. CGT in South Africa—National Treasury Briefing for Rationale, Inflation Indexing, etc ([www.sars.gov.za/cgt/NationalTreasury24Jan2001.pdf](http://www.sars.gov.za/cgt/NationalTreasury24Jan2001.pdf)).

- Olson, M. 1965. *The Logic of Collective Action: Public Goods and the Theory of Groups*. Harvard University Press. Cambridge, Mass.
- Polachek and Siebert. 1995. *The Economics of Earnings*. Cambridge University Press. Cambridge.
- Poterba, JM and Wise, D. 1999. Individual Financial Decisions in Retirement Saving Plans and The Provision of Resources for Retirement\*. NBER Working Paper No. W5762 ([papers.nber.org/papers/W5762](http://papers.nber.org/papers/W5762)).
- Rappaport, AM. 2001. Setting the Stage: An Overview of the Retirement 2000 Issues. *North American Actuarial Journal* 5.1: 1-11.
- Smith, RS. 1990. Factors Affecting Saving, Policy Tools and Tax Reform: A Review. *IMF Staff Papers*, vol. 37.1.
- Thompson, LH. 1998. *Older and Wiser: the Economics of Public Pensions*. Urban Institute Press. Washington DC.
- Vito, T and Lee, H, 2000. Tax Policy for Emerging Markets: Developing Countries. *IMF Staff Papers* 00/35.
- Wadsworth, M, Findlater, A and Boardman, T. January 2001. *Reinventing Annuities*. Staple Inn Actuarial Society, Staple Inn, High Holborn. London ([www.sias.org.uk/papers/reinvann.pdf](http://www.sias.org.uk/papers/reinvann.pdf)).
- White Paper on the Road Accident Fund. 1998. Department of Transport ([www.polity.org.za/govdocs/white\\_papers/raf.html](http://www.polity.org.za/govdocs/white_papers/raf.html)).
- Willets, R. 1999. *Mortality in the Next Millennium*. Richard Willets, Staple Inn Actuarial Society, Staple Inn, High Holborn. London ([www.sias.org.uk/papers/mortality.pdf](http://www.sias.org.uk/papers/mortality.pdf)).
- Yakoboski, P, Ostuw, P and Pierron, B. 2001. The 1999 Small Employer Retirement Survey: building a better mousetrap is not enough. *North American Actuarial Journal* 5.1: 131/2.

## ENDNOTES

- <sup>1</sup> Barr, Nicholas 1998 explains this in the third edition of *The Economics of the Welfare of the State*, Stanford University Press, Stanford, California
- <sup>2</sup> Asher, Anthony, 2001:1 in Old Age and Insurance Paper (fifth draft) researched for the Committee of Inquiry into a Comprehensive Social Security System for South Africa (Data from Codoni C (2000). World insurance in 1999: soaring life insurance business published in SIGMA, Swiss Reinsurance Company, P O Box CH-8022, Zurich)
- <sup>3</sup> See for instance Smith (1990)
- <sup>4</sup> SAIRR 356 – cf 346
- <sup>5</sup> See footnote 4 above
- <sup>6</sup> Yakoboski et al (2001)
- <sup>7</sup> SARB QB 12/2000 S-129. Income from investment appears however to be overstated as it includes significant informal sector business “profits” more properly classified as remuneration.
- <sup>8</sup> cf Economic Trends Annual Supplement, National Statistics, London shows a ratio of this order on page 29
- <sup>9</sup> See for instance the Myners (2001)
- <sup>10</sup> Myners reports this as a requirement of the US Employment Retirement Income Security Act ERISA (14)
- <sup>11</sup> see <http://www.zafinance.com/sections/features/equities/feature000606.asp?CiRestriction=aimr>
- <sup>12</sup> <http://www.iassa.co.za>
- <sup>13</sup> Data from the SARB QB. James *et al* (1999) suggests that US mutual funds offer the best international benchmark on costs. They report investment costs of between 0,1 per cent to 0,6 per cent annually depending the activity of the managers, and annual administration charges of \$20. The average self-administered fund appears to come in at a lower level than this
- <sup>14</sup> This is a rough guess from inspection of the numbers. There are many alternative ways of allocating and measuring expenses. It is not thought that further sophistication is warranted here
- <sup>15</sup> The breakeven point will vary as different technologies are used, but David Gluckman of Oracle Employee Benefits suggests that a minimum of 500 members would be required to justify a separate fund. This suggests that over 99 per cent of employers should participate in some multiple-employer type arrangement.
- <sup>16</sup> <http://www.sars.gov.za/cgt/NationalTreasury24Jan2001.pdf>
- <sup>17</sup> See Glass (2001) and Ferris (2000) for instance.
- <sup>18</sup> Polachek and Siebert (1995)
- <sup>19</sup> Financial Advisory and Intermediary Services Bill (<http://www.fsb.co.za/intermediary.htm>)
- <sup>20</sup> Disclosure rules (<http://www.fsb.co.za/rules.htm>) were introduced in February 2001 to ensure that policyholders are informed about new policy conditions.
- <sup>21</sup> See Wadsworth *et al* (2001) 13-15 for a discussion
- <sup>22</sup> The FSB estimates that R450 million is held in respect of those already over normal retirement date who have not claimed.
- <sup>23</sup> See discussion at [http://www.irf.org.za/irf/pdf\\_per\\_cent20files/16-03-01\\_per\\_cent20S37C\\_per\\_cent20Discussion\\_per\\_cent20Paper.pdf](http://www.irf.org.za/irf/pdf_per_cent20files/16-03-01_per_cent20S37C_per_cent20Discussion_per_cent20Paper.pdf)
- <sup>24</sup> In his opening address to the Pensions Lawyers Association, February 2001
- <sup>25</sup> See Willets (1999)
- <sup>26</sup> Personal communication from Peter Asher, board of The Association for the Aged, Durban