Standing Committee on Finance and Public Administration

Inquiry into
Governance of Australian Government Superannuation Schemes Bill 2010,
ComSuper Bill 2010
Superannuation Legislation (Consequential Amendments and
Transitional Provisions) Bill 2010

ANSWER TO QUESTION ON NOTICE

AND CLARIFICATION OF INFORMATION PROVIDED

March 2010
Department of Finance and Deregulation
Finance and Deregulation Portfolio

1. Question on Notice:

Finance understands that Senator Bushby sought information on whether there are any instances for breach of director's duties under the CAC Act where the Minister would have to seek the ACTU consent before terminating the director.

The Bills provide for the merged trustee for the Commonwealth civilian and military schemes to be a Commonwealth authority under the *Commonwealth Authorities and Companies Act 1997* (CAC Act).

Division 4 of the CAC Act sets out provisions relating to the conduct of officers, including duties of directors, officers and staff of Commonwealth authorities. These provisions are modelled on comparable provisions in the *Corporations Act 2001* (Corporations Act).

The grounds and process for termination of directors is typically set out in the enabling legislation of a Commonwealth authority. Accordingly, the CAC Act itself does not expressly deal with the termination of directors.

However, non-compliance with the director's duties under the CAC Act gives rise to civil penalties or a criminal offence, which would result in a director being a 'disqualified person' for the purposes of the SIS Act as well as potentially prohibited from acting as a director of a body corporate under the Corporations Act.

For the proposed merged civilian and military trustee, the Governance Bill sets out grounds, and process, for termination of a director. Under the Bill, a director's appointment will automatically terminate if he or she becomes a 'disqualified person' for the purposes of SIS.

The Minister can terminate an appointment, without consent of the ACTU or CDF, where a director's continuation in office would contravene the SIS 'fit and proper' standard. The 'proprietary' limb of this standard goes to individual attributes such as competence, diligence, judgement, character, honesty and integrity, which are consistent with the duties and obligations on directors and officers in managing a Commonwealth authority under the CAC Act.

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2. Clarification of information:

Publicly available evidence of savings from pension fund mergers

There was discussion at the hearings about the available evidence of savings from superannuation fund mergers. Finance wishes to confirm to the Committee that its joint submission with the Department of Defence details publicly available evidence from Australia and around the world that scale advance enjoyed by larger superannuation funds is substantial.

Examples of Australian research conducted by the Australian Prudential Regulation Authority and Deloitte Actuaries are set out in the submission at paragraphs 38 and 39.

While not publicly available, the submission (at paragraph 23) also includes data based on advice from SuperRatings in relation to the savings achieved by three significant Australian industry fund mergers in the last 5 years. These are:

- merger of the Australian Retirement Fund, the Superannuation Trust of Australia and Finsuper to establish AustralianSuper in 2006;
- merger of Print Super and JUST Super to establish Media Super on 1 July 2008; and
- merger of the Stevedoring Employees Retirement Fund and the Seafarers Retirement Fund to establish Maritime Super on 1 March 2009.

In relation to the proposed civilian and military trustee merger, the submission reflects actuarial estimates commissioned by Finance from its actuarial service provider, Mercer. The submission notes, at paragraphs 40 and 49:

> "*Mercer estimated that the reforms would generate an improved net investment return of $10 million in 2008 and would be $15 million in 2018 and $19 million in 2028. Of the $10 million net improvement in 2008, Mercer estimated that $7 million would relate to the military schemes and $3 million to the civilian schemes.*"

These figures represent annual savings. Extrapolating these savings over a 20 year period would result in an estimated total improved net investment return for members of the MSBS of some $350 million.