CORPORATE SUPER ASSOCIATION

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8 November 2012

Mr Tim Watling
Secretary
Senate Education, Employment and Workplace Relations Committees
P O Box 6100
Parliament House
Canberra ACT 2600

By email to: eewr.sen@aph.gov.au

Dear Mr Watling

FAIR WORK AMENDMENT BILL 2012
SUBMISSION FROM THE CORPORATE SUPER ASSOCIATION

Thank you for your letter of 1 November 2012 inviting comment from our Association on the Fair Work Amendment Bill 2012 (the ***Bill***).

Background to the Corporate Superannuation Association

Established in 1997, the Association is the representative body for large corporate not-for-profit superannuation funds and their employer-sponsors.

We represent 35% of corporate fund assets and 30% of members of corporate superannuation funds. In general, these funds are sponsored by corporate employer sponsors with membership restricted to employees from the same holding company group, but we also include in our membership a few multi-employer funds with similar employer involvement and focus.

The funds we represent include significant defined benefit divisions, most of which are closed but some of which remain open. In many cases the members are entitled to a combination of defined and accumulation benefits.

Comments on the Bill

Our comments relate to the following areas:

- the exclusion of corporate or tailored MySuper product from those able to contend for award default status;

- the absence of warning about the intention to exclude these, when employers and funds have invested so much time and money in organising themselves for the MySuper transition;

- the proposal that corporate employers use enterprise agreements in place of awards; and

- Transition arrangements.

Exclusion of corporate and tailored MySuper products from default fund status

The Bill's exclusion of Corporate MySuper products and Tailored MySuper products from contention in the nomination of default funds in awards is unjust, unexplained and is not based on any reasonable policy grounds.

To exclude a fund that has qualified for MySuper status simply because it is not a public offer fund is not justifiable. It results in the exclusion of funds that have a long-standing recognition in awards and which provide generous and reliable benefits that have been agreed with large groups of employees subject to awards.

Current industrial agreements and awards nominating specific funds

The retention of corporate funds as default funds in awards, including the retention through grandfathering, has been the result of various forms of careful bargaining and negotiations which have taken into account the needs of the employees. To exclude these funds will result in adverse results for employees, because many provide benefits that exceed SG minimum, provide tailored and favourable insurance arrangements, and are otherwise generously supported by the employer-sponsor in a way that would not apply to an external fund.

Removal of these funds from the default under the award, or inability for the employer to contribute for SG purposes generally, would disrupt the agreed arrangements, resulting in a need for extensive re-negotiations. We consider this would be unlikely to be in the best financial interests of the members.

The potential difficulties associated with varying existing industrial arrangements are very real for the employers contributing to our funds.

Lack of warning about this approach to default funds in awards

We are astonished that, given the key focus on MySuper products as the required fund for SG and award purposes, our employers and funds have been encouraged to spend so much time and money on preparing for the transition to Corporate MySuper or

Tailored MySuper status without any warning that such funds would then be re-classified as ineligible for default fund nomination.

This has resulted in significant wastage of resources by employers and funds and hence the wastage of the assets of our fund members. This indicates a criminally irresponsible and capricious approach by Government to the needs and interests of the members of our funds.

The use of Enterprise Agreements to address employer default super

This approach was foreshadowed in the DEEWR/Treasury submission to the Productivity Commission's inquiry. It represents the only solution offered, given the terms of the Bill, to the plight of those of our employers contributing to single employer-sponsored funds and to tailored MySuper products. This approach proposes the making of specific purpose agreements on superannuation between employer and employee representatives. In practical terms, this approach would involve large scale re-drawing of industrial arrangements, significant disruption and significant costs.

In the meantime transitional arrangements will be required to cover the period from the introduction of the new default MySuper arrangements and a time when employers could reasonably re-draw their industrial arrangements.

Transition arrangements

We recognise that the new section 156K provides for transitional arrangements whereby a MySuper Product other than a Generic MySuper product could be used as a default fund under an award for a limited period approved by the Fair Work Commission. Whilst we recognise that these arrangements are potentially flexible, we are concerned as to how they will work in practice, how much space they will permit employers to re-draw industrial arrangements and for how long a period they will provide relief.

Yours faithfully

Mark N Cerché
Chairman
Corporate Superannuation Association