

4 January 2012

Committee Secretary
Parliamentary Joint Committee on Corporations and Financial Services
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Email: corporations.joint@aph.gov.au

Dear Sir/Madam,

SUBMISSION ON THE SUPERANNUATION LEGISLATION AMENDMENT (MYSUPER CORE PROVISIONS) BILL 2011

About Sunsuper

Sunsuper was established in 1987 as an independent, multi-industry superannuation fund. We have over one million members across Australia and manage \$18 billion on behalf of our members. The trustee of Sunsuper is Sunsuper Pty Ltd, an RSE licensee. The board of directors of the trustee is made up of equal numbers of employer and employee representatives.

Submission

I am writing to you to express concern in relation to some fundamental terminology adopted in the Superannuation Legislation Amendment (MySuper Core Provisions) Bill 2011 which raises significant confusion and uncertainty, and unintended and undesirable consequences.

The fundamental terminology includes:

- "MySuper product",
- "choice product", and
- "class of beneficial interest".

There has been a view expressed at the superannuation industry level, which many superannuation funds will likely rely on, that funds will be able to convert their existing default investment options into a MySuper option which will sit within their existing product offering alongside the other investment options.

This is however not a view which is easily ascertained from the current drafting of the legislation as discussed in the attached summary of the legal difficulties inherent in the use of the terms "MySuper product", "choice product" and "class of beneficial interest".

Our view and concern is that based on the current wording of the legislation, MySuper will have to be interpreted as a separate "product" within a fund, separate to other "products" in that fund. The unintended and undesirable consequences of MySuper being interpreted as a separate product are described in the following two examples:

1. Member invested in both MySuper and choice:
Members who are currently invested in both the default option (MySuper) and in another investment option (choice) will need to hold two products, and will be expected to:
 - refer to two product disclosure statements (PDS's) - one for MySuper and one for choice;
 - receive and read two annual statements, and two lots of product correspondences;
 - consider and potentially hold two insurance offerings, and
 - be charged two sets of fees.

This scenario applies to approximately 130,000 (and over 10%) of Sunsuper's members, and if these members were to hold two "products" this would unintentionally and unnecessarily increase the number of superannuation accounts for members. This is counterproductive to the government and the industry's expressed desires to reduce the number of member accounts. It would also create additional complexity for members and funds.

2. MySuper member invests in choice:
If a member, who is currently only in the default option (MySuper), chooses to invest some of their super in another investment option (e.g. Cash option or Australian Shares option), they will need to open an additional product and will be expected to:
 - Read and refer to a choice product PDS;
 - Complete a choice product application form, and
 - If they switch completely out of the default option (MySuper) into another investment option (e.g. Growth option) they will be issued an exit statement (rather than a switch confirmation advice).

Proposal

As it is clear that the preferred view is for the default option (MySuper) to continue to be provided as an investment option within an existing product alongside the other investment options (choice) then it is proposed that the MySuper legislation be redrafted to:

- replace the term "MySuper product" with "MySuper offering"
- replace the term "choice product" with "choice offering", and
- avoid the terminology around "class of beneficial interest".

Other consequential amendments are proposed to effect the above changes, including replacing the word "product" with the word offering, where applicable, throughout the legislation.

The above proposed changes support the views expressed in the Law Council of Australia 13 October 2011 submission to Treasury, and the Association of Super Funds of Australia 20 October 2011 supplementary submission to Treasury.

Due to potential lengthy computer system change lead times, we respectfully request that these legislative changes be addressed in the Parliamentary Joint Committee report and recommend the above noted changes to the bill in the next sitting of parliament.

Tony Lally
Chief Executive Officer

The legal difficulties inherent in the use of the terms “MySuper product”, “choice product” and “class of beneficial interest”:

1. Key references in the legislation:

The Superannuation Legislation Amendment (MySuper Core Provisions) Bill 2011 introduces provisions into the Superannuation Industry (Supervision) Act (SIS) and Superannuation Guarantee (Administration) Act (SG Act) to effect the proposed My Super reforms.

1.1 A definition of MySuper product is proposed to be inserted into SIS as follows:

A class of beneficial interest in a regulated superannuation fund is a MySuper product if an RSE licensee is authorised under section 29T to offer that class of beneficial interest in the fund as a MySuper product.

1.2 Proposed section 29R of SIS provides that:

- (1) It is intended that all MySuper products will be **simple products sharing common characteristics**.
- (2) The object of this Part is to ensure that a class of beneficial interest in a regulated superannuation fund is not offered as a MySuper product unless it has those characteristics.
- (3) This is done by requiring the RSE licensee of a regulated superannuation fund to obtain authority from APRA before offering a class of beneficial interest in the fund as a MySuper product.

1.3 Proposed section 29TC of SIS describes the characteristics of a MySuper product to include amongst other things:

- (1) A single diversified investment strategy is to be adopted in relation to assets of the fund, to the extent that they are attributed to that class of beneficial interest in the fund; and
- (2) All members who hold a beneficial interest of that class in the fund are entitled to access the same options, benefits and facilities; and
- (3) A beneficial interest of that class in the fund cannot be replaced with a beneficial interest of another class in the fund unless:
 - (i) The replacement is with an interest in another MySuper product within the fund; or
 - (ii) The person who holds the interest consents in writing to that replacement; and
- (4) A beneficial interest of that class in the fund (the old interest) cannot be replaced with a beneficial interest (the new interest) in another superannuation entity unless:
 - (i) The new interest is a MySuper product and the replacement with the new interest is permitted under a law of the Commonwealth; or
 - (ii) The replacement is otherwise permitted, or is required, under a law of the Commonwealth; or
 - (iii) The person who holds the old interest consents in writing to the replacement with the new interest.

- 1.4 Proposed section 29V sets out the fees that may be charged in relation to a MySuper product:
- (a) An administration fee;
 - (b) An investment fee;
 - (c) A buy-sell spread;
 - (d) A switching fee;
 - (e) An exit fee;
 - (f) An activity fee.

2. Our Interpretation / view

Our view is that based on the current wording of the legislation, MySuper needs to be a separate “product” within a fund, separate to other “products” in that fund, and must be more than an investment option.

3. Reasoning

- 3.1 The legislation uses the phrase “MySuper product”. This implies it is in fact a product within the offering fund.

It needs to be noted that this is a separate issue to whether or not the MySuper product is a separate financial product under the Corporations Law. It is clear that for Corporations Law purposes it is not a separate product but a “superannuation interest within the meaning of SIS” like any other superannuation interest.

- 3.2 The Mysuper product is described as being “a class of beneficial interest”. In ordinary trust law parlance a “class of beneficial interest” involves a separate group of beneficiaries who share common rights against the trustee that are different from the rights of other beneficiaries within the same trust. These rights go over and above having rights in relation to a different investment option than other beneficiaries of the trust. They are rights in relation to their “interest” in the fund.
- 3.3 Proposed section 29TC indicates that a MySuper product needs to be more than an investment option as the section describes a number of characteristics of a MySuper product of which its investment strategy is only one.
- 3.4 Fees are currently charged at a product level. Proposed section 29V does not indicate any change to this position, such as charging at a category level.