

October 2, 2012

Parliamentary Joint Committee on
Corporations and Financial Services
PO Box 6100
Parliament House
CANBERRA ACT 2600

Email: corporations.joint@aph.gov.au

Dear Committee

Inquiry into the Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Bill 2012

The Institute of Public Accountants (the Institute) takes this opportunity to respond to the Parliamentary Joint Committee on Corporations and Financial Services Inquiry into the Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Bill 2012 (Inquiry).

The Institute has over 22,000 members, students and academics throughout Australia and around the world. Our members are involved in the superannuation and financial planning industry and will be impacted by the proposed legislation.

The Institute adopts a public interest test when addressing issues of national importance such as those being reviewed by the Inquiry.

The Institute will confine comments to:

- Employers being able to receive generic advice;
- Intrafund advice when transitioning to retirement;
- Disclosure and the 'dashboard'; and
- Nominating funds within awards.

Please see the attached appendix for the Institute's detailed comments.

Please contact our Senior Policy Adviser, Reece Agland,

Kindest Regards

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Appendix A

The Institute supports the broad reforms announced as part of the MySuper reforms (from the Cooper review of superannuation). We support default superannuation being restricted to low cost, low risk funds which do not pay commissions to advisers. However, we also believe that regulation should be minimised wherever possible.

Fees, costs and Intra fund advice

The Institute supports restrictions on payment of product commissions by MySuper type funds. Commissions on financial products result in unacceptable risk.

Employer advice on superannuation

The Bill proposes to ban employers receiving financial services advice and having this advice paid for by the superannuation fund, effectively charging all members of the fund for that advice. The rationale being that fund fees should only cover advice that benefits the fund members as a whole and that costly specialised financial advice should not be subsidised.

The Institute believes there may be circumstances where financial advice given to an employer may be appropriate. Superannuation funds provide a lot of financial advice to employers. Employers, particularly small employers, find it difficult to keep abreast of all the developments in superannuation. The most cost effective way to get information is by way of general advice from a fund.

It is our view that allowing funds to provide this information to employers without charging an additional fee assists both employers and employees. General financial advice assists employers to be more effective and efficient in meeting their superannuation obligations. Superannuation law is constantly changing and the general information provided by funds is often of benefit to members because it prevents employers from breaching the act or their obligations to employees.

The Institute appreciates the rationale for not allowing employers to receive complex financial advice through their superannuation fund. However, rather than an all encompassing ban, the Institute believes there should be limitations placed upon the amount and type of advice provided.

For instance, general non-product specific advice to an employer should be permitted (possibly the amount could be capped) while personal or complex advice could also be banned.

Intrafund advice in transition to retirement

The Institute supports the provision of simple intrafund advice. Lack of financial literacy is a major problem in Australia and simple financial advice of a general nature is important. It is also important that members have access to information about how to make the best of their current situation and fund.

We accept however that more complex personal advice, while important, should not be cross subsidised by all other fund members. Personal and complex advice should be provided at cost to the individual member.

Intrafund advice should be expanded to include advice provided by the existing fund to members wishing to move from the accumulation to the retirement phase. For many with low to medium superannuation balances this will be their only source of advice about transitioning to retirement in a cost effective manner. If they have to pay separately for this advice from within their fund, this reduces their superannuation balances used to pay for the advice.

We are of the view that keeping costs down for members outweighs the general principle that funds not subsidise personal advice.

Therefore the Institute recommends that:

- **employers are able to receive general financial product advice on employer's superannuation obligations.**
- **intrafund advice is expanded to include recommendations within a fund for a member of that fund to transition from an accumulation product into a retirement product within the fund.**

Disclosure of information

Disclosure

The Institute is firmly of the view that disclosure is important to the superannuation sector and will enhance not only the operation of funds but transparency in Australia's financial sector. With well over a trillion dollars in funds under management the superannuation sector is critical to Australia's financial markets. Compulsory superannuation is an important government policy and it is important that the highest levels of disclosure prevail.

As a minimum, superannuation funds should publish a wide range of information about their performance and obligations; and directors and significant persons should disclose remuneration and other benefits in a manner which accords with the disclosure regime elsewhere in the corporate sector.

This information should be displayed on the public portion of fund websites and links through the dashboard.

Dashboard

The Institute supports requirements for funds to provide a publically visible dashboard that provides specific information about the fund and recent performance. It is currently difficult to compare funds due to different investment and reporting requirements. This information is also often not provided in an easy to find and user friendly format.

The dashboard proposed will allow members to compare their fund with like funds to inform possible switching decisions.

Employers will also be able to see how their fund compares. If it is performing poorly and they are not restricted by an Award they could change.

While the dashboard proposals include the disclosure of an investment return target and performance relative to this target, it does not require display of actual performance. We believe this is a weakness in the proposed dashboard. It may result in disinformation.

For example if a person views the dashboard of a fund and finds it has met the target 4 of 5 years that person may feel the fund is doing well. However, if the target is set at a low rate and the fund has barely made the target in those four years but made a serious loss in the fifth then the fund may not be performing well. Simple reference to the number of times targets have been met may not be a reliable indicator of performance.

For this reason we believe the dashboard should also display actual investment returns.

The dashboard should be the key source of fund member information.

Accordingly, we believe the dashboard should contain links to more detailed information such as fund performance, investments and director/senior personnel.

Penalties

While it is important that the dashboard is kept up to date and that there be effective mechanisms to ensure this, we are not certain that the imposition of a strict liability offence will assist proper administration. It will take time and money to have the dashboards in place

and it may be difficult accessing in a timely manner the information necessary to keep the dashboard up to date.

For these reasons we think it is inappropriate to make the offence a strict liability offence. The dashboard is a tool to assist people make decisions and while important, it is not such as to warrant legal action except in the most egregious of situations.

The Institute therefore recommends that:

- **disclosure of remuneration and other benefits received by directors and senior executives in line with disclosures elsewhere in the corporate sector**
- **the dashboard includes actual performance data not whether arbitrary targets have been reached.**
- **no penalties are imposed for failure to maintain dashboard up to date.**

Modern Awards

Nominated funds in awards

The Institute believes it is anachronistic to include requirements about superannuation in the award system when superannuation policy has moved from the industrial relations to the financial advice sphere and where superannuation contributions are compulsory for all working Australians.

The Institute believes that following the MySuper reforms there is no longer a need to enshrine particular protected funds within the award structure to the exclusion of others.

The IPA would like to see the removal of requirements for particular funds to be nominated in an award; to be replaced with a simple requirement that any default fund under an award must be a MySuper Fund (or public sector fund and certain defined benefit funds).

Employers should be able to choose the MySuper fund that best suits them and their employees. These decisions should not be dictated from above, and particular funds should not be protected through the award system.

To assist employers in making a MySuper choice we would support non-binding recommended lists. Many employers will not be interested in searching through numerous options and would welcome assistance. A recommended list based on a number of criteria would be beneficial.

However, those employers who have completed research and want to make a choice should be left to decide whichever MySuper fund is best for them and their employees.

The tradition of ensconcing superannuation funds within awards came about prior to compulsory superannuation, when the only way many could access superannuation was through the award system. The world has changed and this is no longer warranted.

The IPA is of the view that superannuation choice should not be constrained by the award system and that superannuation decisions should be removed from the award sector.

Removing the requirement to have a fund nominated in the award will remove many of the complications and unnecessary regulation under the proposed Bill. All that an employer would be required to do is ensure that a fund is a MySuper fund. This is we believe a relatively simple process.

Fund ceasing to be a MySuper fund

Where a fund ceases to be a MySuper fund we believe that employers should be granted the opportunity to find an alternate fund within a reasonable time. The employer has no control over whether or not a fund is compliant with the MySuper requirements. Therefore if a fund is removed as a MySuper fund the employer should not be in breach of any requirements if they continue to use that fund for a short period to allow them to be informed of non compliance and to find a new fund. A reasonable period should be allowed.

Independent Board members

The Institute believes it is important that boards have sufficient independent directors. Independence is wider than independence from the entity. If default funds are to remain part of the award system, we believe that independent directors must not also be representatives of either an employer association or a union. Such persons are on the Board to represent the interest of their stakeholders and are not independent.

However, rather than create further prescriptive regulation the Institute believes that the “If not, why not” system used by the ASC Corporate Governance Council’s Principles and Recommendation should be the model adopted. Such that it is best practice for an RSE to have independent directors. Where they do not have independent directors there should be a requirement for the RSE to state why it has not followed best practice.

The Institute therefore recommends that

- **the choice of default fund should be removed from Awards and that any MySuper fund is considered as an acceptable fund in an award.**
- **a non binding recommendation list be offered to assist employers in particular industries choose a default fund.**
- **employers have a reasonable time to choose a new default fund where a fund ceases to be a MySuper fund.**
- **default funds have independent directors and where they do not; explain why they do not have independent directors.**
- **the definition of an independent director should exclude any person who is a representative of an employer association or a union.**