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Committee Secretary
Parliamentary Joint Committee on Corporations & Financial Services
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Parliament House
CANBERRA ACT 2600

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Dear Dr Grant,

STRONGER SUPER TRANCHE IV

Thank you for the opportunity to comment on the *Superannuation Legislation Amendment (Service Providers and Other Governance Measures) Bill 2012* (the Bill). We support the principles underpinning Stronger Super and believe these reforms will further promote member confidence, transparency and stability in Australia's superannuation system.

About the Commonwealth Bank of Australia

The Commonwealth Bank of Australia is one of Australia's leading and largest providers of integrated financial services including retail, business and institutional banking, funds management, superannuation, insurance, investment and broking services. The Group's Wealth Management division manufactures and distributes through Colonial First State Global Asset Management, Colonial First State (CFS) and CommInsure, and provides financial advice through the Wealth Management Advice businesses.

This submission in particular relates to both CommInsure as a provider and administrator of a diverse range of legacy and closed superannuation products, annuities and insurance bonds and CFS as a provider and administrator of superannuation products.

CommInsure

CommInsure is the specialist insurance arm of our Wealth Management business unit and is Australia's second largest life insurance and third largest annuity provider. While the CommInsure name was first introduced in 1999, its origins within the Australian insurance industry date back well over one hundred years.

Colonial First State

Established in 1988, CFS specifically provides investment, superannuation and retirement products to individuals as well as to corporate and superannuation fund investors. CFS is one of Australia's largest providers of superannuation, managed investment and retirement income platform providers with over $70 billion in funds under management.

The Wealth Management division of the Commonwealth Bank of Australia has been directly involved in the Stronger Super consultation process and during the development of the Government's legislation, making a number of formal submissions directly and through the Financial Services Council (FSC) and Association of Superannuation Funds of Australia.

While we endorse the FSC's submission on the Bill, we wish to emphasise the following key concerns.

1. Dual regulated wealth management entities

The Bill proposes amendments relating to resource and risk requirements for certain dual regulated entities. That is entities which are both an RSE licensee and also licensed (with ASIC) as a responsible entity (RE). In order to maximise efficiencies and promote a consistent approach, conglomerates have historically implemented single policies, including risk management, that cover both the RE and RSE businesses. For similar reasons, conglomerates also generally don't separate the staffing or management of their responsibilities under these two business units.

The Bill specifically removes the current exemption for these dual regulated entities from having to meet the resource and risk management requirements under the Corporations Act for REs. We acknowledge the policy objective of this proposal is to address concerns over potential regulatory arbitrage. However we are keen to ensure existing efficiencies are maintained and any risk of duplication is minimised, particularly where the APRA and ASIC requirements are addressing the same risks.

We note the objective of both the ASIC and APRA financial resource requirements are to ensure adequate resources are held to absorb

operational risk losses. This is stipulated in APRA's prudential standard (SPS 114) and the explanatory statement accompanying ASIC's Class Order Class Order 11/1140.

Given both APRA's RSE and ASIC's RE financial resource requirements seek to address operational risk, we are specifically concerned that removal of the current exemption effectively duplicates requirements. As noted in the FSC's submission this will result in a considerable increase of capital held by dual regulated entities such as ours.

Recommendation
We firmly believe that the legislation should be clarified to stipulate that the exemption is not removed for those dual regulated entities where there is sufficient evidence that similar risks are already addressed under APRA's requirements for RSEs. Alternatively, the legislation should be amended to clarify that the same assets should be permitted to contribute towards both ASIC's and APRA's requirements.

If the Committee does not consider that these issues warrant changes to the Bill, we would ask that additional text be added to the Explanatory Memorandum in order to provide added certainty for funds and avoid the risk of duplication.

2. Service providers

The Bill has been revised to also override provisions where a specified service provider, investment entity or financial product 'may' be specified in the governing rules. We are concerned the legislation has been broadened from the original exposure draft and has much wider impact beyond the original policy intent under Stronger Super.

The use of the term 'may' is currently a standard feature (or inclusion, etc) in the conflict of interest clause used in our Trust Deeds in order to overcome any risk in permitting the use of related parties. For example, a standard conflict clause would prescribe that the trustee may deal with itself, contract with any person associated with the fund and transact or deal with a related party. Moreover, our authorised investment, administration, investment management and custodian clauses may also be adversely impacted by the amendment.

These provisions are widely accepted and ensure trustee flexibility is maintained while having regard to the best interests of members. Our advice is that the Bill may prohibit the use of related parties by rendering void any provision or clause which is included in the Trust Deed to permit their use. We are particularly concerned that this is likely to give rise to significant structural changes and associated costs

that would need to be passed on to members. We believe these are unintended consequences of the legislation's current drafting.

Recommendation
The Bill should be amended to reflect the original exposure draft.

3. Member price flipping[1] within the same product

Given the Bill also addresses other consequential amendments, including an amendment to the administration fee exemption in section 29VB, we believe this is an appropriate opportunity to address other outstanding issues from earlier Tranches of Stronger Super legislation.

In our view one issue that remains is the compulsory flipping of employees who are members of a generic MySuper product, who benefit from an administration fee discount, to the generic (higher) MySuper fee upon termination of employment. The generic MySuper division of the fund to which the employee/member is 'flipped' will have a higher total fee and may involve a decrease in insurance cover or increased premiums.

We note that the issue of flipping was initially identified in the original Super System (Cooper) Review and the *Superannuation Legislation Amendment (MySuper Core Provisions) Bill 2012* (Tranche I) was amended to address the practice by prohibiting a compulsory transfer from MySuper to another product. We supported these amendments, however, we remain concerned the changes are not broad enough and do not address this pricing issue within the same product, as alluded to above.

Our specific and ongoing concern is that sections 29VA and VB of *Superannuation Industry (Supervision) Act 1993* (SIS), "Administration fee exemption for employees of a standard employer sponsor", do not recognise former employees (those who have terminated employment). The result is the legislation continues to effectively force the act of 'price flipping' in relation to these members.

We firmly believe trustees should have the flexibility, but not the obligation, to continue to offer the discounted administration fee. This is currently a feature of our (and other) corporate super products, called a retained benefits facility, which was introduced to address the issue of flipping.

[1] We do not endorse the term 'flipping' but acknowledge its general use within certain parts of the industry to refer to the practice of transferring a member to another division of a product or to another product without their explicit consent. This transfer may involve charging a higher fee or increased in insurance premiums/decrease in cover. In the past flipping was generally referred to as 'de-linking'.

It would be disappointing if the MySuper reforms overturned industry's well intentioned and resource intensive efforts to address a perceived concern with existing products. It would also be a poor result for employers and trustees who wish to give employee/members a consistent superannuation product experience.

Most importantly, however, it will be concerning to members who cease employment to find that they must absorb a price increase simply to stay with the same MySuper product. It is possible that superannuation funds and policymakers alike could be criticised for delivering this outcome.

Recommendation
A new sub-section (6) under 29VA of SIS should be included as per the following:

> *(6) The trustee or trustees of the fund may continue to apply the lower administration fee to a former employee after the employee has left the employer-sponsor's (or associate's) employ (former employee member) for such period as the trustee or trustees determine. In that case, reference in subsections (2) to (5) to employee members includes each such former employee member.*

The effect of the proposed amendment is that product providers would have the flexibility to pass on a 'plan' (administration fee) discount to former employees if they wish. Equally they would have the ability to default these former employees to the fund's MySuper base rate as per the current drafting.

In our experience allowing providers to maintain the discount once employment has ceased delivers positive member outcomes. It gives providers the flexibility to cater for a range of retained benefit designs both now and into the future. The design of our current retained benefits model is such that former employee-members remain within their existing employer plan as administered by the fund, effectively continuing to contribute to the scale and other benefits that the employer brings to the fund. We therefore find it difficult to understand why they should be treated any differently from 'active' members. Our proposed amendment also achieves a consistent policy outcome with the original Tranche I amendment.

Finally, it is worth noting that this same issue does not arise where an employer has a tailored MySuper product (over 500 employee members) – in this case a former employee can retain their existing fee level.

For funds such as ours, it is therefore in the best interests of all members in plans greater than 500 employee members to apply for a tailored MySuper licence. The result is we now intend to apply for approximately 70 tailored licenses (i.e. all plans over 500 employee members) to allow the retained benefits discounts to be passed through. This is despite the fact that only around 5-10 plans actually want tailoring to offer a different MySuper option.

We are concerned this will place a significant administrative burden on our fund as well as on the regulator as we come to consider reporting, monitoring and compliance and the licensing process for these products.

We commend these recommendations to the Committee and welcome the opportunity to provide further information as required.

Yours sincerely,

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