ACCI SUBMISSION TO JOINT COMMITTEE ON CORPORATIONS AND FINANCIAL SERVICES INQUIRY INTO SUPERANNUATION LEGISLATION AMENDMENT (MYSUPER CORE PROVISIONS) BILL 2011

Submission | 2011

AUSTRALIAN CHAMBER OF COMMERCE AND INDUSTRY

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EXECUTIVE SUMMARY

ACCI's submission to the Joint Committee on Corporations and Financial Services Inquiry into Superannuation Legislation Amendment (MySuper Core Provisions) Bill 2011.

ABOUT ACCI

Who We Are

The Australian Chamber of Commerce and Industry (ACCI) speaks on behalf of Australian business at a national and international level.

Australia's largest and most representative business advocate, ACCI develops and advocates policies that are in the best interests of Australian business, economy and community.

We achieve this through the collaborative action of our national member network which comprises:

- All state and territory chambers of commerce
- 27 national industry associations
- Bilateral and multilateral business organisations

In this way, ACCI provides leadership for more than 350,000 businesses which:

- Operate in all industry sectors
- Includes small, medium and large businesses
- Are located throughout metropolitan and regional Australia

What We Do

ACCI takes a leading role in advocating the views of Australian business to public policy decision makers and influencers including:

- Federal Government Ministers & Shadow Ministers
- Federal Parliamentarians
- Policy Advisors
- Commonwealth Public Servants
- Regulatory Authorities
- Federal Government Agencies

Our objective is to ensure that the voice of Australian businesses is heard, whether they are one of the top 100 Australian companies or a small sole trader.

Our specific activities include:

- Representation and advocacy to Governments, parliaments, tribunals and policy makers both domestically and internationally;
- Business representation on a range of statutory and business boards and committees;
- Representing business in national forums including Fair Work Australia, Safe Work Australia and many other bodies associated with economics, taxation, sustainability, small business, superannuation, employment, education and training, migration, trade, workplace relations and occupational health and safety;
- Representing business in international and global forums including the International Labour Organisation, International Organisation of Employers, International Chamber of Commerce, Business and Industry Advisory Committee to the Organisation for Economic Co-operation and Development, Confederation of Asia-Pacific Chambers of Commerce and Industry and Confederation of Asia-Pacific Employers;
- Research and policy development on issues concerning Australian business;
- The publication of leading business surveys and other information products; and
- Providing forums for collective discussion amongst businesses on matters of law and policy.

INTRODUCTION

This Submission is made by the Australian Chamber of Commerce and Industry (ACCI) to the Joint Parliamentary Committee on Corporations and Financial Services (the Joint Committee) addressing aspects of the *Superannuation Legislation Amendment (MySuper Core Provisions) Bill 2011* (the Bill).

ACCI thanks the Joint Committee for the opportunity to comment. It supports the Bill's passage.

The Bill is one of a number of foreshadowed Bills to give effect to the recommendations of the Review into the governance, efficiency, structure and operation of Australia's superannuation system (the Cooper Committee) as adopted in a modified form by the Government as "*Stronger Super*". The Bill would mainly amend the *Superannuation Industry Supervision Act 1993* (SIS Act) but would also amend the *Superannuation Industry (Administration) Act 1992* (SGA Act).

Employers have a direct interest in making the superannuation system both simpler to interact with and more transparent and efficient. Reducing the administrative burden of superannuation not only reduces the cost and regulatory obligation for employers, but benefits fund members (their employees) as well, by enabling greater contributions to be paid into their accounts. Administrative complexity rarely imposes costs on one side only and the price of employer confusion is also borne by the funds.

The Cooper Committee's recommendations can be separated into four broad streams –

- "MySuper",
- "SuperStream",
- self-managed superannuation funds, and
- issues to do with fund governance.

For employers, "MySuper" and "SuperStream" are particularly important given their potential to improve the superannuation system for employers. The changes proposed by "SuperStream", in particular, can be expected to impact on every employer in Australia.

In assessing the impact of existing arrangements and the proposed changes ACCI is particularly concerned to consider the impact on small businesses, given their numbers and limited number of specialist staff they have to deal with these administrative obligations. ABS figures in June, 2009 indicated there were 497,098 businesses employing 1 – 4 employees and 233,957 employing 5 – 19, a total of 731,055 employers with fewer than 20 employees.[1] This represented 89% of the total number of 820,803 employing businesses at that time. Clearly then implementing the *Stronger Super* changes must work for small business.

1. Table 13, Business by Employment Size Ranges, ABS Cat 8165.0, Counts of Australian Businesses, including entries and exits, June 2007 to June 2009, released 21/10/2010. There were also another 1,236,999 non-employing businesses at that time.

However, at the same time significant numbers of fund members are also employed by larger business and the Stronger *Super* proposals clearly impact on a diverse range of existing arrangements and benefits. In May, 2010, for example, employers employing fewer than 20 employees employed 2,345,500 employees, representing 27% of the total of 8,967,700 employees.[2]

Many larger employers have sought to make superannuation one of the ways they distinguish themselves as employers.

While SuperStream is clearly important for employers so is MySuper. Employers share with their employees a common interest in a safe, secure and effective superannuation system, which yields good returns to its members (their employees) and is properly designed with their needs in mind.

In the case of MySuper the main interest for employers concerns –

- the operation of the superannuation system when MySuper rules apply, and
- the process of transition to MySuper.

ACCI supports the MySuper goals of reducing account costs, making costs more transparent, improving the basis for inter-fund comparison, and providing improved member protection. ACCI recognises that many employees are not well positioned to be actively engaged in making investment decisions, and an appropriate superannuation system must recognise this.

Employers too must not be expected or required to give advice to employees and should not be put into the position where there is any pressure or obligation for them to do so.

BACKGROUND TO THE BILL

Stronger Super was released 16 December, 2010. However, the Government's implementation of *Stronger Super* follows consultation during 2011 through mechanisms such as the Stronger Super Peak Consultative Group (SSPCG) and subordinate working parties. This process culminated in the issue of the *Stronger Super – information pack* (SSIP) on 21 September, 2011. ACCI was a member of the SSPCG and the relevant working parties.

2. Table 7, Methods of setting pay, ABS Cat 6306.0, Employee Earnings and Hours, released 27/01/2011.

The Government's approach to the implementation of *Stronger Super* is to be commended. ACCI acknowledges the opportunity to consult and the Government's preparedness to listen. In his second reading speech the Minister rightly acknowledged the work of Jeremy Cooper and Paul Costello, who chaired the SSPCG. ACCI agrees their contribution should be recognised.

ACCI also wishes to record its appreciation of the work of Treasury and the Australian Tax Office, charged with implementing *Stronger Super*. *Stronger Super* is a major reform and relevant officers have approached the task with diligence, openness and a preparedness to listen.

This approach stands in marked contrast to the Government's handling of the proposed increase to the superannuation guarantee percentage and the processes associated with the *Superannuation Guarantee (Administration) Bill 2011*. ACCI's previous submissions to the House Economics Committee and the Senate Economics Committee have made this clear.

THE BILL

The Bill proposes to legislate some of the core features required for approval of MySuper products, as well as the process for gaining approval of a MySuper product, and some related transitional arrangements. Other matters remain for future tranches of legislation, including the treatment of defined benefit funds and schemes, [3] and the nomination of funds in awards and agreements.

In its final report, released on 5 July, 2010, the Cooper Committee recommended that fund members who were relatively disengaged from their superannuation, (members who did not make active choices about where their money was invested), should have their then contributions made into MySuper accounts:

> "MySuper members would receive the protection afforded by the duties imposed on a traditional trustee who is a fiduciary acting single-mindedly in the best financial interests of members. They would be in a product with a single, diversified investment strategy, insurance would be offered, but few other product features. There would be a limited role for external advice because intra-fund advice would be 'embedded' in the product and there would be limited choices to be made by the member [4]"

3. The Cooper Committee also recommended that defined benefit funds be treated as default funds and not be required to satisfy MySuper requirements unless they were hybrid with an accumulation component which was required to meet superannuation guarantee contributions – in which case the accumulation component needed to comply with MySuper requirements for the fund to be default (P 179, Super System Review: Final Report – Part Two: Recommendation Packages, Recommendations 6.13 – 6.15P 179, Chapter 6, Integrity of the System). *Stronger Super* adopted the idea that where a defined benefit fund satisfied superannuation guarantee obligations it should automatically be regarded as MySuper qualified and operate as a default (P 44, *Stronger Super*).

4. P 8, Chapter 1, MySuper and Choice Architecture, Super System Review: Final Report – Part Two: Recommendation Packages

In essence, MySuper is a particular investment strategy buttressed by rules governing product features and trustee duties. MySuper is directed at the relationship between the fund and its member, and whether the member wishes to direct investment or not.

None of this has anything to do with the employer. The employer has no role in an employee's investment decisions, and should not. The employer's role is to make contributions into the fund and this should be as simple as possible. The selection or non-selection of an investment profile does not concern the employer and should not involve the employer. A member's decision to change an investment profile within a fund should have no impact on the employer, or the employer's contribution obligations.

However, although MySuper is really an investment product, (the proposed new default investment product,) it is also proposed in the context of choice of fund obligations. It is important to recognise that the Cooper Committee's notion of "default" encompasses this dual characteristic – a default applies when the member does not actively select an investment option within his or her fund, but also when the employee does not actively select a fund. Employers supply the employee's default fund whether they have selected it or it has been imposed by an industrial instrument.

The Cooper Committee drew attention to the fact that the absence of active choice did not necessarily mean a lack of interest; it recognised that some employees explicitly preferred their employer's default (which if they were changing jobs might also be their current fund) or their fund's default investment option. The Committee expressly proposed that MySuper should be for both types of member.

The key feature of the proposed MySuper product is that it should be a simple, well-protected, cost-effective product with a diversified portfolio of investment and reasonable long term returns. Trustees would develop their default investment strategy with these outcomes in mind, and for many members this could be their best investment strategy.

> "Also, as noted, MySuper is not just for people who are disengaged. With the lower costs and traditional trustee obligations, the Panel believes that many engaged investors will actively choose to have their superannuation in MySuper.[5])

It is difficult to know how widespread MySuper take-up will be but it seems clear that most members are likely to become MySuper members. In its final report the Cooper Committee cited estimates showing that 80% or so of member accounts were invested in funds' default investment options[6] and a similar proportion is reported in *Stronger Super* in terms of the level of fund choice:

5. P 10, Chapter 1, MySuper and Choice Architecture, Super System Review: Final Report – Part Two: Recommendation Packages
6. Endnote 4, Chapter 1, MySuper and Choice Architecture, Super System Review: Final Report – Part Two: Recommendation Packages

> "Of almost 12 million Australians who currently hold a superannuation account, approximately 80 per cent have their compulsory superannuation contributions paid into a default superannuation fund.[7]"

The explanatory memorandum to the Bill uses a different figure, reporting

> "…Around 60% or members do not make active choices about their superannuation.[8]"

It is difficult to know whether this 60% figure is based on different source figures or shows the effect of counting only those who did not formally choose a fund and did not formally direct their investment within their fund. It is clear, however, that MySuper will be a significant part of the superannuation landscape.

The Cooper Committee intended MySuper accounts to be a development of the existing default investment options offered by many accumulation funds:

> "Generally speaking, existing default investment options have delivered good outcomes for members. The Panel sees the MySuper proposal as based in and around the existing widely offered and well-understood default investment options. Indeed, MySuper has been designed to sit within the existing structures currently offered by many superannuation funds. However, MySuper also aims to focus trustees' attention more sharply on the types of member advantages afforded by those default options.[9]"

That is, MySuper should not be unnecessarily disruptive. It is expected many if not most of the generally available default funds will seek and gain MySuper approval and will continue to operate as default funds for employer contributions.[10] This means that for many employers the commencement of the MySuper requirements should mean no change to existing fund arrangements. Contributions should continue into the fund as before. This is appropriate.

THE COMMENCEMENT OF MYSUPER

The SGA Act requires employers to contribute into a complying fund on behalf of their employees so as to avoid incurring a superannuation guarantee charge. For private sector employers the SGA Act also requires the fund into which contributions are made is prescribed by an agreement [s. 32C(6)] is a chosen fund [s. 32C(1)(a)], or it satisfies s. 32C(2), being, in the context of choice of fund a default fund.

7. P 5, *Stronger Super*
8. P 5, Explanatory Memorandum. This statistic is also quoted in the Minister's second reading speech (3 November 2011).
9. Pp 9-10, Chapter 1, MySuper and Choice Architecture, Super System Review: Final Report – Part Two: Recommendation Packages
10. P 5, *Stronger Super*

Item 1 schedule 1 of the Bill would amend s. 32C(2) of the SGA Act so as to provide that a contribution into a default fund must be made to a fund which offers an approved MySuper product. Clause 2 of the Bill provides that this requirement would come into effect on 1 October, 2013 so that an employer's s. 32C(2) SGA Act contributions (contributions into a default fund) made on and from 1 October, 2013 would need to be made to a fund offering MySuper.

The proposed amendment to s. 32C(2) SGA Act to require post 1st October, 2013 contributions into funds offering approved MySuper products only affects contributions which an employer makes into a default fund (including a default nominated by an award); it does not alter existing choice of fund requirements when contributions are being made into a fund prescribed by an agreement or into a chosen fund. This is appropriate and supported.

Items 4 and 6 schedule 1 of the Bill insert definitions of "MySuper product" and "choice product" into s 10, "Definitions" of the SIS Act. A choice product is an investment product in a fund which is not a MySuper product. Clause 2 of the Bill would bring these items into effect on proclamation or by 1 January, 2013 but item 11 Schedule 1 of the Bill delays the effect of APRA's MySuper approvals until 1 July, 2013.

Therefore no later than 1 January, 2013 all existing investment options, including a fund's existing default investment option, will be "choice products". There will not be any MySuper products until 1 July, 2013. This is a technical change only and does not affect what the fund is doing, but it means all investments are in, and incoming contributions are being directed into "choice products" when "MySuper products" commence on 1 July, 2013.

Division 6, item 9, schedule 1 of the Bill proposes to insert a new s 29WA into the SIS Act which would require fund trustees to place contributions into the fund's "MySuper product," unless the member has directed some or all of their contributions into a "choice product". Clause 2 of the Bill would bring item 9 into effect on proclamation or by 1 January, 2013, but item 13 schedule 1 delays the start of proposed s 29WA SIS Act until 1 October, 2013.

The timing provisions in the Bill mean that funds with MySuper approval will be able to offer their MySuper product from 1 July, 2013, but not before. Employers will have to make their s 32C(2) SGA Act contributions into a fund offering a MySuper product on and from 1 October, 2013 and where there is no member directed investment trustees will have to allocate contributions into the fund's MySuper product on and from 1 October, 2013.

This raises a number of scenarios.

1. The most typical situation will be that of an existing employee whose contributions are made into the employer's default fund and allocated into the fund's default investment option, and the fund receives MySuper approval (offers a MySuper product). The employer will continue its s. 32C(2) SGA Act contributions into the existing fund and this will mean they continue to comply with the s 32C(2) SGA Act obligations after 1 July and after 1 October, 2013. By 1 October, 2013 the trustee will have had to determine whether contributions are to be directed into the MySuper product, or a choice product (which might be the fund's pre-MySuper default). The employer would also enrol new employees and contribute into the existing default fund where the employee does not choose a fund. It would seem open to a trustee to direct contributions for a new employee enrolled after 1 July, 2013 into the MySuper product, where there was no directed investment strategy, because this would be the fund's new default investment strategy.

2. From the employer's perspective the same outcome applies where an employee, whose contributions are made into the employer's default fund which receives MySuper approval, has directed the fund about how the contributions are to be invested (has selected a choice product). The employer would continue to make s.32C(2) SGA Act contributions into the same fund as before. Whether the trustee would continue to allocate the contributions into the existed directed investment strategy at this point may depend on the foreshadowed legislation.

3. In some cases the employer's pre-1 July, 2013 default fund will not offer a MySuper product and the employer will have to change its default fund. The employer will have to set up an arrangement with a new, permissible default fund and issue a standard choice form to those employees currently having s 32C SGA Act contributions paid into the old default. The form will specify the new default. An employee could opt to remain in the old default (making it a chosen fund) but to do so the employee would also need to direct the investment strategy. Without a directed investment strategy (a selected choice product) the fund could not allocate the member's contributions, (which should require the employer to contribute into the new default fund because the fund should not be able to accept the contribution).

4. The impact of items 4, 6 and 9 of the Bill is not limited to s. 32C(2) SGA Act contributions. A similar issue arises where the employee has contributions made into a chosen fund [s. 32C(1)(a) SGA Act] which does not offer a MySuper product, and the employee has not selected a choice product. After 1 October, 2013 the fund would not be able to allocate that member's incoming contributions. As with scenario #3 above it is important to ensure that where a fund cannot allocate incoming contributions because the member has not directed the investment it must advise the employer it cannot accept contributions.

Where this occurs the employer must make contributions into the default fund for the employee unless there is a new chosen fund able to accept contributions. All of this must occur without the employer

a. incurring a superannuation guarantee charge or breaching an industrial instrument or contract, and
b. being involved in assisting, encouraging or advising the employee about making a direction about investment.

5. In some cases contributions will be made to a fund nominated by an agreement [s 32C(6) SGA Act]. Although the transition for agreements where the nominated fund does not offer a MySuper product is yet to be determined, proposed s 29WA SIS Act would still come into effect from 1 October 2013 for trustees. Contributions made under an agreement into a fund which does offer a MySuper product from 1 July (likely to be the case for agreement-nominated funds) would resemble scenarios 1 or 2, depending on whether the member had directed investment or not. The transition of funds nominated by agreement is yet to be finalised, so it is not clear how the situation of a fund nominated by an agreement, which does not offer a MySuper product, will be dealt with.

These scenarios also draw attention to the importance and necessity of appropriate communications between funds and their members and for relevant information to be provided to employers. Employers will need to be aware of what they need to do to ascertain compliance with s 32(2) SGA Act contributions and what is required of them when funds cannot receive contributions in the various circumstances identified above.

The explanatory memorandum to the Bill advises it is intended APRA will publish a list of all funds offering approved MySuper[11] and this will assist by providing an authoritative source of information about which funds can be default. However, this is not the extent of information which will be needed.

There is a major communication effort required of funds to their members. Apart from the explicit question of whether a member wants to direct investment or not, having contributions made into a MySuper product will also raise the question of account consolidation. ACCI accepts that funds are aware of the information task ahead but it is important that information which goes to members or employees, does not lead to employees asking their employer for advice or guidance, or requiring them to give it. Information which is directed towards employers needs also to make clear that employers should not try or be required in any way to give advice to employees about what they should do.

11. P 11, para 2.5, Explanatory Memorandum

FUNDS NOMINATED BY AWARDS AND AGREEMENTS

The Cooper Committee recommended that only MySuper products should be eligible to be a default nominated by an employer and that only MySuper products should be nominated in awards as default funds.[12] *Stronger Super* broadly adopted these two recommendations stating that –

- MySuper products would replace existing default funds after a suitable transition; and
- the Government would request Fair Work Australia to review default funds nominated in awards so that only those offering MySuper would continue to be prescribed.[13]

The SSIP stated that "…Additional transitional arrangements will be developed to deal with situations involving funds nominated in enterprise agreements."[14] The explanatory memorandum to the Bill advises that subsequent tranches of legislation will address consequential amendments dealing with the nomination of superannuation funds in modern awards and agreements.[15]

Importantly, the SGA Act's treatment of fund nomination by agreements differs from its treatment of fund nomination by awards.

Where contributions are made into a fund in accordance with an enterprise agreement not only is choice satisfied but there is no obligation to issue a standard choice form [s 32NA(2) SGA Act]. Funds nominated by agreements are not default funds in that sense and they are not included in agreements by Fair Work Australia; rather Fair Work Australia approves an agreement in its entirety if the proposed agreement satisfies the statutory tests under the *Fair Work Act 2009.*

There is no wish by employers to upset the current situation where a fund can be nominated by an agreement and thereby satisfy choice. ACCI welcomes the undertaking of further consultation concerning the transition of MySuper requirements for agreements and would be pleased to participate in that consultation.

Where a modern award (or a pre-modern award instrument such as a NAPSA or pre-modern award) applies, the employer's selected default fund must be consistent with any fund or funds nominated by the award. Contributions into a chosen fund prevail over any award obligation to contribute into a nominated fund, but contributions into a default fund, (contributions made under s 32C(2) SGA Act), are subject to award fund nomination and many modern awards prescribe one or more funds.

12 P 11, Chapter 1, MySuper and Choice Architecture, Super System Review: Final Report – Part Two: Recommendation Packages, Recommendations 1.2 and 1.3

13 P 15 *Stronger Super*

14 P 3 *Stronger Super* – Information Pack

15 P 8 Explanatory Memorandum

The Cooper Committee recommended that the Productivity Commission be requested to review the process whereby funds are nominated in awards to assess whether the process is sufficiently open and competitive.[16] In response, *Stronger Super* stated that the Government would request the Productivity Commission to design a process by July, 2013 for the selection and ongoing assessment of funds nominated as default funds in awards and agreements.[17]

Many modern awards currently contain a standard clause which prescribes an obligation to contribute into one of one or more nominated funds for employees where choice has not been exercised:

24.1 Superannuation legislation

a. Superannuation legislation, including the *Superannuation Guarantee (Administration) Act 1992 (Cth), the Superannuation Guarantee Charge Act 1992 (Cth)*, the *Superannuation Industry (Supervision) Act 1993* (Cth) and the Superannuation (Resolution of Complaints) Act 1993 (Cth), deals with the superannuation rights and obligations of employers and employees. Under superannuation legislation individual employees generally have the opportunity to choose their own superannuation fund. If an employee does not choose a superannuation fund, the superannuation fund nominated in the award covering the employee applies.

b. The rights and obligations in these clauses supplement those in superannuation legislation.

24.2 …

24.4 Superannuation fund

Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in clause 24.2 to another superannuation fund that is chosen by the employee, the employer must make the superannuation contributions provided for in clause 24.2 and pay the amount authorised under clauses 24.3(a) or (b) to one of the following superannuation funds or its successor:

[list of 11 funds plus any pre-12 September 2008 fund being used]…[18]

There are two distinct issues involved with the award prescription of superannuation –

- the treatment of funds nominated in awards which do not offer a MySuper product and,
- post- MySuper nomination of funds by awards. It is noted that the explanatory memorandum has foreshadowed legislation dealing with nomination of funds in awards but it would seem to be desirable

16 P 11, Chapter 1, MySuper and Choice Architecture, Super System Review: Final Report – Part Two: Recommendation Packages, Recommendation 1.4

17 P 15, *Stronger Super*

18 Taken from cl 24, "Superannuation", *Clerks – Private Sector Award 2010* MA000002

that modern award provisions properly reflect the obligations they purport to impose. Achieving this may determine the timing and nature of the foreshadowed reference to the Productivity Commission.

MYSUPER AND LARGE EMPLOYERS

The Cooper Committee proposed as a general rule there should only be one MySuper product per RSE, but allow for exceptions where a trustee had multiple distinctly branded products within the one RSE, or is a master trust, or where there might be different administrative costs for different employers for whom a MySuper product is their default.[19] Typically larger employers dealing with generally available funds have been able to negotiate discounted administrative fees (and/or improved services) on the basis of scale. Some employers have subsidised administration fees.

Stronger Super favoured MySuper funds charging the fee stated in their schedule.[20]

The SSIP accepted the principle of one MySuper product per RSE but following consultation allowed for employers to negotiate an administration fee discounted from the standard fee and the option for large employers (those employing more than 500 employees) to have a company-specific tailored MySuper product.[21] These exceptions are supported and properly build on the current situation.

Item 9 schedule 1 of the Bill proposes to insert a new Part 2C - MySuper into the SIS Act which identifies the characteristics required of a MySuper product, identifies exceptions, prescribes the approval process, and provides APRA's powers with respect to approvals.

(a) Fee Subsidisation

Proposed s 29TC SIS Act prescribes the characteristics of a MySuper product, and requires a fund's governing rules to provide accordingly. Proposed s 29TC(1)(b) requires all members of a fund's MySuper product to have the same access to options, to benefits and facilities, and that gains or losses are not streamed between them, except on the basis of lifecycle investment (proposed s 29TC(1)(c). The fund's rules are also required to ensure that the same process is undertaken in attributing contributions or earnings to all the MySuper product's members except to the extent that the employer subsidises fees. These can be handled differently but must be handled in the same way for all of that employer's members in the MySuper product (proposed s. 29TC (1)(d) and (e). This is supported.

19 Pp 17 - 18, Chapter 1, MySuper and Choice Architecture, Super System Review: Final Report – Part Two: Recommendation Packages. Recommendation 1.7(g) proposed there should be objective requirements for fee discounts in MySuper products.

20 P 17, *Stronger Super*

21 P 4, SS-IP

(b) Fee Discount

Proposed s 29VA SIS Act prescribes fund charging rules for MySuper products and basically gives effect to the idea of equal treatment of all members of a MySuper product. Proposed s 29VB provides an exception where the employer has entered into an arrangement with the fund's trustee for lower administrative fees for its employee MySuper product members, provided the same arrangement covers all of its employee members in that product. This is supported.

(c) Large Employer MySuper Products

Under proposed s 29T(1)(f) SIS Act an applicant RSE may only be authorised to offer a MySuper product if it has not already been authorised to offer another MySuper product, or if it has, the additional MySuper products (or the existing approved MySuper products) are the results of a fund transfer or are large employer tailored MySuper products.

Proposed s. 29TB SIS Act addresses large employer tailored MySuper products. Proposed s. 29TB (1) (a) requires a fund's rules must identify the large employer for whom there is a tailored MySuper product. Proposed s. 29TB (1) (b) requires the employer is or will be a large employer in that fund (employ at least 500 members in the fund – proposed s. 29TB2)). ACCI supports basing the requirement for 500 or more employee members on fund membership rather than membership of the MySuper product. This avoids potential instability for tailored MySuper product approvals or a potential systemic discouragement for employee members to opt for a choice product in the fund.

The criterion that there be 500 or more members of the fund also requires the members to be actively receiving contributions, that is, they must be receiving contributions or receiving them but for a "temporary cessation of contributions" (proposed ss. 29TB(1)(d), s.29TB(2). "Temporary cessation of contributions" is not currently defined in the SIS Act, although it is used in s. 16(1) (b) of the SIS Act in the definition of "employer sponsor" (which is an employer who makes a contribution to a fund for an employee member).

To the best of ACCI's understanding what is a "temporary cessation of contributions" is not addressed in APRA guidance material and has not been litigated. In light of its potential importance for determining approval or continuing approval (under proposed s. 29U (2) (b) of a tailored MySuper product, APRA may wish to consider developing guidance material about what constitutes a "temporary cessation of contributions".

Proposed Division 2 of Part 2C SIS Act (ss. 29S – 29SB) provide for applications by RSEs for MySuper approval. Section 2 of the Bill brings these requirements into effect on proclamation or no later than 1 January, 2013. Applications to APRA for approval can be made from that date.

Under item 12 of the Bill applications for large employer tailored MySuper products made before 1 July, 2013 are deemed to have been made on that day and APRA has 120 days (plus a possible additional 120 days) to approve them.

Contributions made to the applicant fund during the time that APRA is deciding the application on and after 1 October, 2013 are deemed to satisfy s. 32C (2) (c) of the SGA Act. The fund is deemed to satisfy the MySuper obligation for contributions into a default fund although the large employer product is not yet approved. This would apply even in the case where the fund does not offer another MySuper product. This is supported.

Item 12 (item 12(5) – (6) of the Bill also provides a 3 month grace period for s 32C(2)(c) SGA Act contributions after an approval for a tailored MySuper product has been rejected to allow time for arrangements with alternative permissible default fund to be established. This corresponds to the 1 July – 1 October 2013 3 month period for generally available default funds discussed above. It is appropriate and is supported.

Item 12(5) (b) of the Bill also suspends the operation of proposed s 29WA (requiring the trustee to allocate non-choice product contributions into the MySuper product) during the grace period. This is also appropriate, and supported. However, it is less clear that the trustee can direct non-choice product contributions into the applicant tailored MySuper product if APRA approval is delayed past 1 October 2013, which might occur where APRA required further information of the applicant. Item 12(5) operates in the event of APRA refusing the application.

The item 12 transitional provisions do not apply to applications which are not made before 1 July, 2013. In this respect "late" applications for approval of large employer tailored MySuper products are in the same position as applications for approval of new generally available MySuper products.

ACCI MEMBER CHAMBERS

ACT AND REGION CHAMBER OF COMMERCE & INDUSTRY AUSTRALIAN FEDERATION OF EMPLOYERS & INDUSTRIES BUSINESS SOUTH AUSTRALIA CHAMBER OF COMMERCE & INDUSTRY QUEENSLAND CHAMBER OF COMMERCE & INDUSTRY WESTERN AUSTRALIA CHAMBER OF COMMERCE NORTHERN TERRITORY NEW SOUTH WALES BUSINESS CHAMBER TASMANIAN CHAMBER OF COMMERCE & INDUSTRY VICTORIAN EMPLOYERS' CHAMBER OF COMMERCE & INDUSTRY

ACCI MEMBER NATIONAL INDUSTRY ASSOCIATIONS

ACCORD AGRIBUSINESS EMPLOYERS' FEDERATION AIR CONDITIONING & MECHANICAL CONTRACTORS' ASSOCIATION AUSTRALIAN BEVERAGES COUNCIL AUSTRALIAN DENTAL INDUSTRY ASSOCIATION AUSTRALIAN FOOD AND GROCERY COUNCIL AUSTRALIAN HOTELS ASSOCIATION AUSTRALIAN INTERNATIONAL AIRLINES OPERATIONS GROUP AUSTRALIAN MADE, AUSTRALIAN GROWN CAMPAIGN AUSTRALIAN MINES AND METALS ASSOCIATION AUSTRALIAN PAINT MANUFACTURERS' FEDERATION AUSTRALIAN RETAILERS ASSOCIATION BUS INDUSTRY CONFEDERATION CONSULT AUSTRALIA HOUSING INDUSTRY ASSOCIATION LIVE PERFORMANCE AUSTRALIA MASTER BUILDERS AUSTRALIA MASTER PLUMBERS' & MECHANICAL SERVICES ASSOCIATION OF AUSTRALIA NATIONAL BAKING INDUSTRY ASSOCIATION NATIONAL ELECTRICAL AND COMMUNICATIONS ASSOCIATION NATIONAL FIRE INDUSTRY ASSOCIATION NATIONAL RETAIL ASSOCIATION OIL INDUSTRY INDUSTRIAL ASSOCIATION PHARMACY GUILD OF AUSTRALIA PLASTICS AND CHEMICALS INDUSTRIES ASSOCIATION PRINTING INDUSTRIES ASSOCIATION OF AUSTRALIA RESTAURANT & CATERING AUSTRALIA VICTORIAN AUTOMOBILE CHAMBER OF COMMERCE