Better regulation and governance, enhanced transparency and improved competition in superannuation

AMP submission – 12 February 2014

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Contents

Introduction

AMP welcomes the opportunity to provide feedback on the measures outlined in the "Better regulation and governance, enhanced transparency and improved competition in superannuation" Discussion Paper.

AMP has consistently participated in the lengthy consultation surrounding the development and introduction of the Stronger Super regime. We are broadly supportive of the regime however, there are a few substantive measures that require further amendment to ensure that the Stronger Super regime is efficient, cost effective and aligned to the interests of the members it seeks to protect. In addition, there are a number of points of detail where we suggest changes are appropriate either because the implications of the approach adopted were not fully considered by the previous Government or the changes were rushed in without detailed and genuine industry consultation. These matters are briefly addressed in the Appendix to this submission – we would be pleased to provide further detail on these matters as required.

AMP has not sought to respond to each of the questions posed within the Discussion Paper. Rather we have sought to comment on those matters of greatest significance or concern. For the most part, as indicated in various sections below, AMP supports the submission made by the Financial Services Council on behalf of the industry. The FSC submission provides a more granular response to a number of outstanding issues in the industry, which we have not sought to replicate here. Where we have not commented on an area that is covered in the FSC submission, AMP supports the position taken in the FSC submission.

A better approach to regulation

Stronger Super legislation and supporting regulations have introduced a number of particularly problematic provisions in regard to disclosure that could usefully be revisited.

Publication of information (s29QB)

Firstly, under s29QB of the SIS Act the trustee of a superannuation fund is now required to publicly disclose a broad range of information on its website (at this stage, commencement of the requirement has been deferred at the request of the industry to allow more time for implementation and to allow the new Government time to consider these requirements). Whilst we support information being available to relevant members, the requirements include:

- a range of information that may be confidential (eg: actuarial reports) or commercially sensitive (eg: negotiated fees) in respect of individual employer plans, as well as

- an array of information that is only relevant to small groups of members. An example of this is the requirement to include all PDSs. In employer super arrangements we have literally hundreds of PDSs for various small groups. While each member is given the PDS relevant to them, only the generic product-level components of the PDS are normally on the website. Technically in some employer-sponsored products, every member has a separate PDS as the member's welcome letter forms part of the PDS. As such this requirement is not practical and will most likely result in confusion for the members' who search for information online web[1].

[1] It should be noted that each AMP member can access their specific welcome letter electronically at any time via their own discreet log in to AMP's web portal - MyPortfolio

Given that requests for this information are relatively rare, we suggest that a better approach would be for the information published on the website to be limited to generic information in regard to the fund or product as a whole with the trustee being required to advise members on the website of the other information that is then available on request and how to obtain it (free of charge).

Further detail on this issue is contained in the FSC submission and AMP supports the FSC recommendations in this area.

RECOMMENDATION: Only generic information is required to be published on the website and the Trustee is required to advise a member (on the website by way of regular communication) that other information is available upon request.

Section 29QC of SIS and APRA reporting

Second, s29QC is a "catch all" requirement under which, where an item is calculated for the purposes of reporting to APRA and an equivalent item is made available to any other party, the item must be calculated in the same way as for APRA reporting. Based on the Explanatory Memorandum, this provision was targeted at having a consistent methodology for the calculation and disclosure of investment returns.

We have three problems with this clause:

1. The nature of the clause is all-encompassing, potentially covering hundreds of separate items advised to APRA and requiring funds to investigate and "remediate" all the circumstances where they may use equivalent items, at a large and unnecessary cost.

2. The requirements potentially outlaw the provision of valuable information to members, such as member-specific investment returns (as the numbers advised to APRA are an overall product level calculation).

3. The requirements fail to recognise that outside of a MySuper environment, the most sensible calculation of investment returns from a member's perspective is net of investment fees (but before administration fees) and that in a wrap platform environment it is neither sensible nor practical to calculate returns net of tax. We note that (tax and many of the fees are calculated at an overall member account level, not at an individual investment option level and the effective tax and fee rates for members may be different even though they have the same investments.

ASIC have extended (via the FAQ) the reach of s29QC to potentially include asset class definitions (and hence reporting) for investment options. This change would require multi-million dollar changes by trustees for no benefit to consumers. In fact, for consumers this will be confusing as two identical investments in the same vehicle will have different asset class allocations if they are in different tax regimes (ie: super and non-super).

We suggest that s29QC as drafted is a very blunt instrument and needs to be repealed.

Failing that it needs to be re-written to capture the specific disclosures that require further regulation. We would suggest that ASIC (as the relevant regulator for enforcement of this provision) should be asked to specifically identify a range of examples of materially inappropriate disclosure under the existing law that would be prevented by s29QC. It would also be instructive to understand why existing provisions, such as prohibitions on deceptive and misleading conduct are not sufficient for such cases. In any case, any revised provisions need to take account of the nature of products such as wrap platform products, the desirability of having different calculations of investment

performance in different circumstances and the complication of different asset class reporting under different tax regimes.

Further detail on this issue is contained in the FSC submission and AMP supports the FSC recommendations in this area.

RECOMMENDATION: Section 29QC should be repealed. ASIC should be required to identify any specific examples of materially inappropriate disclosure that are not adequately able to be dealt with by existing legislation prior to any further regulatory intervention being required.

Superannuation Legislation Amendment (MySuper Measures) Regulations 2013

The Superannuation Legislation Amendment (MySuper Measures) Regulations 2013 (Select Legislative Instrument No 155) were made on 28 June 2013 by the previous government with virtually no prior industry consultation. In particular, the fee disclosure changes (**MySuper Fee Measures**) effected by these Regulations are a source of great concern.

The MySuper Fee Measures made a number of significant and unexpected changes to Enhanced Fee Disclosure[2] for choice and investment products. There was little consultation with industry on the application of the new requirements beyond MySuper.

AMP unreservedly supports the policy intent of the changes. Clear, comparable and relevant disclosure of fees and costs is critical for consumer decisions and to maximise competition in the industry. Our concern is that the new requirements do not achieve their aims and are in fact counterproductive.

In our view, these changes are detrimental to consumers. We believe that they will make fee disclosure less clear and make product comparisons more confusing and difficult. The MySuper Fee Measures were designed for relatively simple and homogenous MySuper products - their extension to more complex and varied choice products is unworkable.

Our concerns can be summarised as follows:

1. **The regulations permit inconsistent disclosure of similar fees and costs:** Changes to the standardised terminology will mean that many common types of fees will now be able to be disclosed in a number of inconsistent yet still compliant ways. Consumers will not be able to easily compare fees and costs where different issuers choose different approaches – even where two products are identical.

2. **The regulations adopt terminology that is not true to label:** In a number of cases, the new terminology and definitions will confuse and may even mislead consumers because they do not reflect the ordinary meaning of those terms.

3. **The disclosure of fees and costs is dependent on product structures:** The way in which fees will be disclosed will depend on product structure – fees and costs that are identical from a consumer's point of view would be disclosed differently if the product structures are technically different.

4. **The regulations apply different definitions to the same terminology:** The new requirements have different definitions for the same terminology in different contexts. For

[2] Enhanced Fee Disclosure introduced standardised disclosure of fees and costs in PDSs and periodic statements. It is set out in Schedule 10 of the Corporations Regulations 2001 (Regulations).

example, Indirect Cost Ratio (ICR) is defined and calculated differently for managed investment schemes versus superannuation funds. This is especially problematic for superannuation platforms that give consumers access to a menu of underlying managed investments.

5. **The regulations do not cater for existing streamlined disclosure rules for investment options:** The new requirements interfere with existing rules that appropriately allocate responsibility for disclosure of financial products accessed via a platform or master trust.

6. **The regulations assume that it is appropriate for the fees and charges for choice products to be classified in the same way as for MySuper products:** MySuper products are restricted by law to a limited number of named fee types. Choice products are not restricted in number, type or name of fee and it is counterproductive to attempt to shoehorn Choice product fees into being disclosed in the same way MySuper products.

7. **Implementation of the regulations will be costly with little consumer benefit:** Consumers will ultimately bear the considerable costs of implementation through higher fees and charges, for no apparent benefit. Further, if implemented in their current form, these requirements will themselves need to be replaced in the near future to address the issues that will arise, resulting in considerable waste and further increases in fees and charges ultimately borne by the member.

We note that industry sought, and finally late last year was granted, class order relief[3] by ASIC to delay implementation of the regulations until 1 July 2014. However, due to the fundamental deficiencies and the significant expansion of scope of these regulations we believe that additional time is required to allow adequate rectification and then for industry to implement the final form of the regulations. The Fee Measures also have a flow on impact to the trustees system requirements to meet its APRA reporting obligations under SRS 540.0 – Fees.

Further detail on this issue is contained in the FSC submission and AMP generally supports the FSC recommendations in this area. However, we believe that further consultation and discussion is required before the most appropriate approach to items like the most appropriate calculation of the Indirect Cost Ratio (ICR) is finalised. In addition, given the ongoing importance of this issue to the efficient and transparent operation of the industry, AMP has made a separate submission which more fully explains each of the issues outlined above.

RECOMMENDATION:

1. The Government undertakes broad consultation on appropriate fee disclosure rules for MySuper and Choice products; and in the interim
2. The regulations and associated APRA reporting obligations be withdrawn; or
3. ASIC extend the relief delaying implementation of the fee measures to at least 1 July 2015 and the relevant APRA reporting obligations be correspondingly deferred.

[3] ASIC Class Order 13/1534 was issued on 16 December 2013 and extends the timeframe for fee disclosure until 1 July 2014. The Class Order also extends the timeframe to include product dashboards in periodic statements to 1 January 2015 (provided the website address for the latest product dashboard appears in periodic statements).

Other MySuper matters

MySuper is "up and running" and, for the most part appears to be operating effectively. Accordingly, AMP does not favour changes to MySuper in areas such as the authorisation process for tailored offers, the threshold number of members for establishing a tailored offer or the structure and requirements for fees and charges on a MySuper offer (including the requirements for situations in which fees can be discounted for particular members).

However, there are a number of detailed implications of the MySuper provisions which could usefully be amended. AMP's recommendations in regard to these matters are included (along with recommendations on a number of non-MySuper matters) in the Appendix to this submission.

SuperStream implementation of electronic contributions

AMP supports the direction of the SuperStream initiatives to move the industry away from paper and cheque processing, although the cost savings claimed in the Cooper Report are in our view highly exaggerated.

Nevertheless, converting rollovers to standardised electronic processes where none previously existed has been an important step forward.

Similarly, it is important to move employers from submitting superannuation contributions via paper and cheque to electronic processes. However, the ATO (as the regulator of this area of SuperStream) appears to be intent on creating a compulsory standardised set of data and electronic submission requirements/formats that will severely disrupt existing efficient electronic processes that the industry already has in place.

There is a key distinction between rollovers, where no electronic processes existed, and contributions, where organisations already have existing electronic processes which operate very effectively for a large proportion of employer contributions.

As one of Australia's largest providers of employer-based superannuation, AMP has spent more than a decade focussing on ways to improve the back-office processing of contributions and is one of (if not the) most efficient processor(s) of employer contributions in the market. We have a number of electronic straight through processing systems tailored to the varying needs of our clients which result in more than half of our employer-submitted contributions already coming via straight through processing solutions.

Indeed, we suggest that our primary means of receiving such contributions (branded as eSuper and Super Online) is probably more efficient than the ATO-proposed approach as our systems enable data matching and reconciliation at the point of uploading the payroll file. Such reconciliation effectively eliminates the event of incorrect data being submitted and as a result preventing the processing of the member's contribution.

Notwithstanding that efficiency, the ATO labels these systems as "bridging" solutions to be assessed over the next three years and potentially phased out in favour of the ATO's one-size fits all approach. In this regard, the ATO's approach will create costs and disruption to both the industry and employers using these systems (AMP's and similar systems used by many of our competitors) with no net gain to efficiency.

Another example of this is that many employers use specially created BPAY facilities to make contributions for their employees who have exercised choice of fund. These specially created facilities require no additional data submission because the fund and contribution type (employer, employee, etc) are identified by biller code and the member is identified by a unique customer reference number (CRN). It is a fast, accurate and straight-through process, provided at nil cost to

employers and widely used by small business as an efficient contribution payment mechanism. The current requirements will ban this mode of payment with massive disruption to both the industry and business, especially small and medium sized businesses.

To give you an understanding of the size of this issue, AMP Life (which does not include the business acquired with the purchase of AXA) received over 400,000 employer superannuation contributions totalling over $300 million in 2012 alone via this "BPAY only" channel. Other institutions with large employer superannuation businesses will have corresponding issues.

In fact, there is scope for a simple direct credit solution to become a key channel for employer contributions to superannuation funds as the Australian Payments Clearing Association is working with the Reserve Bank on a new payments system (targeted for late 2016) which would deliver the ability for employers to pass rich data with direct credits.

All of this simply serves to reinforce that the most efficient mechanisms for electronic contributions are likely to come from market innovations rather than from regulator prescribed processes.

We suggest that there is a need for (relatively minor) changes to the regulations and the ATO's approach to ensure that the BPAY only channel (and potentially other efficient electronic channels) for contributions, particularly by small and medium sized business, continues to be available.

We support the need for a default standard file format and transport mechanism that funds must accept, so that any employer (either directly or via a service provider) can adopt that standard and know that the fund will process contributions on that basis. However, this mechanism should not act to the exclusion of existing efficient electronic processes that already achieve the underlying policy intent.

Overall, we suggest that the focus of the legislation/regulations, and the ATO as the relevant regulator, should be on converting employers from paper and cheques, and providing a default standard that can be adopted by employers if they so desire, rather than compulsorily overriding existing electronic channels.

RECOMMENDATION:

1. That SuperStream electronic contribution processing requirements allow for the permanent use of any electronic processing solutions including:
   - fund-specific portal arrangements for employers;
   - "BPAY only" systems; and
   - other electronic processing arrangements,

   while providing a default set of standards that can be adopted by employers (and must be accepted by funds).

2. Given the proximity to the 1 July 2014 implementation date currently prescribed it would be appropriate for the Government to immediately announce a deferral of that start date.

Legacy products

In general "legacy products" are maintained on aging computer systems which, while operating effectively at a point in time, are expensive and complex to modify. Consequently, any regulatory changes to legacy products are both disproportionately expensive and introduce a high degree of risk of system failure. Furthermore, the nature of legacy products is such that most regulatory

changes are not designed with legacy products in mind and do not necessarily produce sensible and meaningful results in legacy products. Regulations often have to be extensively amended and expanded to cope with legacy products, further complicating the regulatory environment.

The FSC submission outlines a number of areas where it believes that a "carve out" for legacy products is appropriate. AMP supports the FSC recommendations in this area

However, we believe that a broader policy approach to legacy products is appropriate. We submit that, apart from essential tax changes, the starting point should be to exempt legacy products from regulatory changes unless it can be clearly established that there is an essential and overwhelming reason for including legacy products in the change.

While no clear cut definition of "legacy products" currently exists, we believe that the industry, in conjunction with the Government and regulators could develop an appropriate definition. Alternatively, a simple, workable approach would be to classify any product that has been closed to new customers for more than 5 years as a legacy product.

RECOMMENDATION: The Government adopts a broad policy position that "legacy products" are carved out of all new regulatory requirements unless it is demonstrated that there is an essential and overwhelming reason for including legacy products in the change.

Regulator-initiated requirements

As part of the Stronger Super reforms, regulators have been given substantial opportunities to create new requirements with which the industry must comply, most notably APRA in terms of prudential standards and reporting requirements but also the ATO in regard to SuperStream. No doubt, this has been an efficient way to introduce certain reforms and we acknowledge that the regulators have generally consulted extensively before finalising their requirements.

However, those requirements have not necessarily been accompanied by a clear and detailed statement of the public benefit of the specific requirements nor has it always been obvious that genuine industry concerns (either with the cost of the requirements or the appropriateness of the requirements) have resulted in appropriate changes to the requirements.

Going forward, where regulators introduce new requirements, AMP suggests that the requirements should include a detailed statement of the problem being addressed, the additional public benefit arising from the requirements and how the requirements have been balanced against the cost of introducing and maintaining the new requirements. AMP believes this would be closely aligned to the Government's policy on the introduction of new regulations, as detailed in the speech by the Hon Josh Frydenberg MP to The Sydney Institute on 28 October 2013.

RECOMMENDATION: That the Government require industry regulators, in proposing new requirements on industry participants, to include a detailed statement of the problem being addressed, the additional public benefit arising from the requirements and how the requirements have been balanced against the cost of introducing and maintaining the new requirements.

Better Governance

Definition of independent directors

AMP strongly supports the thrust of the FSC submission on better governance and would point out that AMP has demonstrated that support by voluntarily adopting a structure with a majority of independent directors for the two companies that are the trustees of the various superannuation funds operated by AMP.

However, we submit that the ASX Corporate Governance Principles do not adequately cater for the situation of industry funds and other so called not for profit funds when it comes to the definition of independence. In this regard, SIS already has a definition which ensures that representatives of sponsoring organisations such as trade unions and employer representative bodies cannot be regarded as "independent". Accordingly, as well as meeting the ASX Corporate Governance Principles, the definition of "independence" for the directors of RSE Licensees should contain the same exclusions as currently set out in SIS.

RECOMMENDATION: The definition of Independent Director for RSE Licensees should be primarily based on the ASX Corporate Governance Principles but should also contain the same exclusions from being an independent director as are currently set out in the SIS legislation.

Abolition of policy committee obligations

In addition, the SIS legislation currently contains requirements under which a fund that does not meet the "equal representation" rules in respect of the composition of the board of the RSE Licensee must establish equal representation "policy committees" for standard employer sponsored arrangements in a range of circumstances. AMP submits that this is a hangover from the "equal representation" approach to governance. Policy committees rarely achieve their original intended purpose and are an unnecessary additional cost burden on funds, such as those operated by AMP, which have separately established RSE Licensee structures in line with the best practice corporate governance principles. Note that this would not prevent an RSE Licensee from operating a policy committee where it sees value in that approach, it would merely remove the burden of doing so in cases where no value is added and would remove the detailed and restrictive rules on the appointment and operation of policy committees.

RECOMMENDATION: That all provisions in the SIS legislation related to policy committees be repealed.

Enhanced Transparency

AMP supports measures which promote increased transparency and simplified disclosure for members so that they are able to better engage with their superannuation savings. However, such measures must be designed as an efficient, meaningful and cost-effective means of communication.

Product dashboards

MySuper

We acknowledge the laudable intent of the legislation was to simplify and standardise the presentation of key information to members. In the Explanatory Memorandum introducing the legislated provisions, the Minister of the day stated that product dashboards would include "key information, useful for both new and existing members". He went on the say that "Standardised disclosure of key information will allow members to easily compare products and thus make informed choices". However, we do not believe that including product dashboards in member statements will assist in achieving these goals.

The inclusion of product dashboards in already overcrowded member statements will simply result in substantial costs for funds (and ultimately members) with very few members taking the time to read and understand their dashboard. The process of referring members to the website will both meet the need for those members wanting the information and avoid the substantial printing and mailing costs of including such statements in dashboards.

So far as the aim of providing members with simple comparisons goes, individual MySuper dashboards (in statements or on websites) are relatively useless – this came out quite strongly in the consumer testing that ASIC recently undertook on MySuper product dashboards. We acknowledge that, in the case of standardised MySuper products simple comparisons can be relevant (notwithstanding that there are other important product features such as insurance which cannot be easily represented or compared in a dashboard) but individual product dashboards do not meet that need. APRA will be publishing generic MySuper "league tables" for those members who do want to compare such information (including industry consultants, journalists as well as members),. This is the logical and easy source for anyone wanting to make such comparisons. In this way, a member or third party can access a single repository of comparative information, rather than being required to seek out each individual trustee's MySuper data to compile a comparative analysis.

RECOMMENDATION:

1. MySuper product dashboards should not be required to be published in individual member statements (periodic or exit).

2. Members seeking comparative information should be directed to the publicly available generic APRA MySuper product information.

Choice products

Despite extensive dialogue with the industry, product dashboards for choice products essentially remain an expensive and misguided attempt to improve disclosure to members. In the case of Choice products, the products are not at all standardised or homogeneous and therefore are not easily comparable. The concept of a member using a simplified dashboard to compare the costs and returns of an Exchange Traded Fund (ETF), a

structured equity product and a fixed interest fund is not sensible and any comparison based on such dashboards is likely to be highly misleading.

Today, with some minor exceptions, all the information that would be published in a product dashboard is already available to members (on websites and elsewhere) through PDSs, fact sheets, annual reports and other documents. The ultimate aim should be to ensure members have access to this information in a way that is meaningful. The concept of a simple product dashboard does not achieve this aim.

Due to the fundamental definitional and design flaws, the requirements for choice dashboards should be abandoned. If the Government is not prepared to do that at this stage, it is imperative that the implementation of choice product dashboards be delayed for at least two years to see what is the usage of MySuper dashboards and use consumer testing to see what consumers liked or disliked about MySuper dashboards to establish whether choice dashboards would serve any useful purpose. Otherwise the industry will be forced to spend many tens of millions of dollars establishing systems to produce this inadequate, ineffective and misleading regime and then several million dollars every year maintaining them – costs which, at the end of the day, will be a significant cost impost to members.

Further detail on choice dashboards is contained in the FSC submission and AMP supports the FSC recommendations in this area.

RECOMMENDATION:

1. The requirement for choice dashboards be abandoned; or

2. The implementation of product dashboards for choice products be delayed for at least two years and then only introduced if/where consumer testing of MySuper dashboards demonstrates that meaningful and useful simple choice dashboards can be developed.

Portfolio holdings disclosure

Portfolio holdings disclosure was intended to provide transparency on the investments underlying superannuation fund investment options. While this has merit for consumers, the reporting framework needs to be carefully considered to ensure the information is digestible and easily understandable by consumers or it risks being overwhelming and detracts from the consumer benefit. More data is not necessarily better. Moreover, the benefits of transparency in this regard, both for consumers and other market participants and commentators, need to be balanced against the cost of providing such disclosure.

AMP is concerned that the obligations as previously drafted do not align to the original policy intent and would be extraordinarily costly to implement[4].

For example, the proposal as drafted (particularly for say a typical multi-manager balanced fund) could result in a document running to dozens of pages of detailed text and numbers for a single investment option, which could only serve to obscure any meaningful disclosure and confuse members.

[4] Across all superannuation products, AMP offers over 2000 investment options. Each one of these would require a portfolio holdings disclosure document.

For some funds, disclosure of the underlying assets in which they invest is a commercially sensitive matter and one that could have a significant adverse effect on the value of the investments in those funds (e.g. value of individual commercial properties) or the commercial arrangements under which the investment was made (e.g. where confidentiality / non-disclosure clauses have been signed). AMP specifically supports the FSC submission where it calls out "The difficulties with disclosing sensitive information can also apply where the investment strategy is considered commercially sensitive information" and "the difficulties with disclosing sensitive information can also apply to the assets themselves…".

APRA has adopted a less costly (although still far from a trivial cost) approach in one form (SRF 532.0 Investment Exposure Concentrations) of only requiring "look through" disclosure for related parties. However, that simply results in inconsistent and potentially misleading and/or meaningless disclosure (for example if a fund interposes a third party trust in its investments – no disclosure of portfolio holdings is required).

Further detail on this issue is contained in the FSC submission and AMP supports the FSC recommendations in this area.

RECOMMENDATION:

1. That portfolio holdings disclosure be restricted to direct investments and the number/value of units in underlying MISs, with underlying MISs being required to similarly disclose their holding (ie no look through requirements).
2. That exclusions be allowed for small holdings, individually or in aggregate, to simply disclosure, make it more digestible for consumers and others, while still meeting the policy intent of transparency of material holdings.
3. Where an RSE trustee reasonably believes that the identity and/or value of an asset is commercially sensitive and that disclosure of the identity and/or value of that asset is not in the best interests of members, information about such assets can be disclosed under the designation "Other" without detailed disclosure of the details of that asset.
4. That APRA's reporting requirements similarly remove any look through reporting requirements (thus maintaining consistency between APRA reporting and portfolio holdings disclosure obligations).

MySuper investment arrangements

MySuper is intended to provide low-cost, simple, transparent, comparable products for members, with the option of Choice products for those looking for something more suitable to their specific needs.

However, the existing rules, which allow some RSE to have MySuper offers with "trustee declared" interest rates, while others have mark to market daily unit prices does not sit well with the intention of the MySuper rules.

Declared interest rate offers are neither genuinely comparable nor transparent and consequently are not appropriate for a MySuper regime (quite apart from the debate around the equity of such arrangements. In practice, only a uniform approach of daily unit pricing fits with the goals of MySuper.

RECOMMENDATION: That, with effect from 1 July 2015, all MySuper offers be required to have daily unit pricing for their investment arrangements.

Enhanced Competition in Superannuation

AMP has a long history assisting employers and their employees in their superannuation needs. AMP is currently responsible for the management of approximately $20 billion in superannuation assets that are directly attributable to approximately 500,000 members of a number of employer default superannuation plans.

AMP has long advocated the need to review the existing process by which default superannuation funds are nominated in the Modern Awards. We are one of the few retail superannuation providers that are nominated on a small number of Awards – in all cases this is a result of our historical position as a provider of superannuation products to various employers under Awards pre-Award modernisation.

Recently however, changes to the way default superannuation is treated within awards have created a restrictive and uncompetitive landscape that is inefficient and unwieldy for employers and potentially detrimental for employees.

The superannuation industry has undertaken significant transformation over the past few years, culminating this year in the commencement of the MySuper regime. The MySuper product is specifically designed for default superannuation monies. To date, a little over 100 MySuper licenses have been granted by APRA – substantially less than all superannuation products available in the broader market.

APRA are the regulator of the MySuper regime. A MySuper provider must be licensed, meet strict obligations and provide significant reporting to the regulator to continually prove their qualification to offer the product. APRA are also tasked with providing strict reporting back to the public in respect of these products that include the publication of how the products are performing against one another. However, Fair Work Australia has been given the mandate to largely ignore this work in favour of creating their own assessment process above and beyond what APRA will be undertaking.

Prior to the commencement of the Modern Award system, specific funds could be nominated within an Award. However most Awards did not restrict employers from going beyond the nominated funds through the inclusion of an open clause stipulating they could choose from any other complying superannuation fund. The introduction of the Modern Awards removed this clause; meaning new employers to an Award are completely restricted to those funds nominated in the respective Award. This is an inefficient, anti-competitive and discriminatory outcome for those employers actively engaged in the superannuation needs of their employees.

From 1 January 2014, the modern awards are to be amended to include a maximum of 15 nominated MySuper products. How these 15 funds will be determined is still largely unknown. The Fair Work Commission finally released an incomplete draft statement outlining the first stage of the application process only on 30 January 2014. This draft statement does not provide significant further insight to the process given it largely is just a restatement of the legislative provisions.

The removal of an employer's ability to choose an alternative superannuation provider outside of the stipulated list removes the ability for a truly competitive landscape in the default superannuation market. Employers will now be restricted to the only those funds stipulated within an award, whether that is satisfactory to the employer or not.

Furthermore, there are a number of logistical issues that have not been adequately considered in the current legislative environment that urgently need remedy. Some examples are:

- The inefficiency for employers from having employees across multiple awards. There are many employers who have employees across a wide range of awards and the only practical

options for them will be to contribute to a wide range of funds (an administrative nightmare and an unreasonable cost burden on the employers) or to choose one of only a handful of funds (perhaps only one or two) that obtain listing on virtually all awards – this will give those funds an unreasonable competitive advantage; and

- The issues surrounding any removal of a fund from an award as part of the Fair Work Commissions' review of awards every four years – removing a fund from a list will be massively disruptive to existing arrangements between funds and employers, potentially threaten the ongoing viability of the relevant fund and be highly disadvantageous to the remaining members (creating multiple superannuation accounts for them as new contributions are switched to the new default fund but existing balances stay with the old fund). The only alternative to this would be for the Fair Work Commission to operate a process under which funds can be added to an award (up to the maximum number) but are never removed – an equally unsatisfactory process, especially once the maximum number of funds under an award is reached..

The MySuper regime has been explicitly designed to cater for the default superannuation market. The duplication of responsibilities between APRA and Fair Work Australia in assessing and monitoring MySuper products is inefficient and unnecessary.

Further detail on this issue is contained in the FSC submission and AMP supports the FSC recommendations in this area.

RECOMMENDATION: The Fair Work Act is amended to ensure that any complying MySuper product is eligible for inclusion on any modern award and no further assessment process by Fair Work Australia be required.

APPENDIX – Additional suggestions for improvements to StrongerSuper regulation

1. **Reporting and disclosure of Accrued Default Amounts (ADAs)**
   At present, RSE Licensees are required to include information on ADAs in Product Disclosure Statements (PDSs) and member statements.

   As ADAs apply to current members and PDSs are given to new members, AMP submits that it does not make sense to include information about ADAs in PDSs.

   Furthermore, the requirement to include information about a member's ADA in periodic statements, includes exit statements. Given that the member has already left the fund at that point, it does not add anything to include ADA information in exit statements.

   Recommendation: That the requirements for the inclusion of ADA information in PDSs be removed and that exit statements be exempted from the requirement to include ADA information in periodic statements.

2. **ADA information in notice of transfer**
   Prior to transferring a member's ADA to a MySuper product the RSE Licensee is required to give the member a notice about the transfer. This notice is in lieu of the broader requirements of the law for a Significant Event Notice (SEN). However, while SENs provide information about the relevant event but are not tailored to individual members, in the case of ADA transfers, RSE Licensees are required to include a range of member-specific information in the notice.

   That member-specific information dramatically increases the complexity and cost of providing the notice. AMP submits that the requirement to include the member-specific information is unnecessary and inappropriate because:
   - the notice requires the amount of the member's ADA at the time of the notice – this will almost always be the same as the member's total account balance, excluding their MySuper balance, and therefore adds no new information. However, it will also not be the same as the final ADA transfer (because of subsequent transactions and investment returns) which will be confusing for members and add to enquiries and complaints;
   - because these are default members, very few are likely to take any action on the basis of the notice, so the cost of including the information far outweighs any benefit; and
   - if transfer is to an RSE that is not operated by the same RSE Licensee, some of the information required on the statement is unlikely to be available or even obtainable.

   Recommendation: That the requirements for the inclusion of member-specific information in ADA transfer notices be removed.

3. **Unvested employer contributions**
   There are long-standing arrangements where an employer has made contributions in respect of an employee in excess of compulsory contribution levels that only vest in the employee over a period of time. Where the member has not made an investment choice, these contributions would seem to form part of the member's ADA. Section 29TC of SIS would then appear to require that on transfer of the ADA to MySuper, the full amount becomes vested in the member.

AMP submits that it is not appropriate for the MySuper provisions to effectively make changes to the vesting of contributions paid in the past.

Recommendation: That s29TC of SIS be amended to ensure that it does not operate to vest contributions in a member that would otherwise not be vested in the member.

4. **Investment of death benefits prior to payment**

A common industry practice for many years has been that on the death of a member, the member's benefit is transferred to cash because neither the member or anyone else is then in a position to exercise investment choice and it is generally regarded as important to avoid a reduction in the benefit (eg in a falling market) while the trustee is determining who is the appropriate beneficiary to receive the benefit. However, MySuper does not allow the RSE Licensee to vary the investments of a MySuper member away from the standard MySuper arrangements.

Following industry submissions on this point, the former Government inserted a power in s29TC(1)(g) of SIS for regulations to prescribe circumstances in which the RSE Licensee could vary a MySuper member's investments away from the standard MySuper arrangements. However, no such regulations have been made.

Recommendation: That regulations be made under s29TC(1)(g) of SIS to enable an RSE Licensee to transfer the account of a deceased member to a cash or similar investment option until the benefit is paid.

5. **Employers subsidising of MySuper fees**

As noted in the body of our submission, AMP does not favour changes to the structure and requirements for fees and charges on a MySuper offer (including the requirements for situations in which fees can be discounted for particular members).

However, once the RSE Licensee has determined what the fees are, the question of who pays the fees is not something that should be constrained by legislation. For example, if an employer wishes to subsidise the fees for a particular employee that should be a matter for the employment relationship between the employer and the employee, not something which is governed by legislation.

Currently s29TC(1)(e) requires that if an RSE Licensee allows subsidisation of MySuper fees by an employer, the RSE Licensee is required to ensure that the fee subsidisation does not favour one employee over another. AMP submits that ensuring equal treatment of employees by an employer is not an appropriate role for an RSE Licensee. Furthermore, the provision can be circumvented by an employer paying additional contributions for those employees that it wishes to subsidise.

Recommendation: That s29TC(1)(e) of SIS be repealed.

6. **MySuper impact to insurance only members**

Many RSEs have arrangements under which the contributions payable by the member or by his/her employer are limited to the insurance premium in respect of the relevant member. A common situation where this arises is where an employee has exercised choice of fund but the employer wishes to ensure that the employee continues to have insurance cover and as a result elects to pay a contribution to the default fund (over and above the SG contribution to the employee's chosen fund) to fund the provision of the insurance cover.

There is no investment account for such members, as the contribution is simply the required insurance premium, but technically under the law the member has not made an investment

choice in the fund (because there is nothing to invest) and is therefore a MySuper member. The RSE Licensee then is required to consider how to apply all of the MySuper provisions to these members and to report these members to APRA etc, as MySuper members.

Recommendation: That "insurance only" members be excluded from all MySuper requirements.

7. Large employer MySuper offer details on the APRA register

Under SIS Regulation 11A.04, the register of RSEs maintained by APRA is required to include, in respect of each large employer MySuper authorisation, the name and ABN of each associated employer within the arrangement.

This requirement is both unnecessary and impractical. It would be common for such arrangements to have dozens of associated employers and in some cases there may even be hundreds of associated employers. Furthermore, with the buying and selling of businesses, the list of associated employers could change from time to time without the RSE Licensee being aware of the change.

Indeed we note that AMP's RSE Licensees currently have the majority of large employer MySuper authorisations and to date we have only been asked to provide details of the principal employer sponsor of each large employer MySuper authorisation. AMP suggests that the regulation should be amended to coincide with current practice.

Recommendation: That SIS Regulation 11A.04(h)(iv) be amended to only require the name and ABN of the principal employer/ participant in regard to a large employer MySuper authorisation.

8. Stronger Super modification powers in SIS for APRA & ASIC

ASIC has broad modification powers in respect of the Corporations Act so far as it relates to financial services and APRA has modification powers in respect of some components of SIS. These powers can be useful and practical tools for the efficient administration of the intent of the legislation in a range of special circumstances.

However, the SIS provisions introduced by the Stronger Super legislation (some of which are administered by APRA and some of which are administered by ASIC) do not include such modifications powers. AMP suggests that the Government should consider the introduction of modification powers for APRA/ASIC in regard to the SIS provisions introduced by the Stronger Super legislation.

Recommendation: That the Government review the SIS provisions introduced by the Stronger Super legislation and where appropriate, introduce modification powers for APRA and/or ASIC.

9. Statutory defence for investments by an RSE Licensee

The Stronger Super legislation removed the previous statutory defence for an RSE Licensee in relation to investment decisions that the investment was made in accordance with the investment strategy adopted by the RSE Licensee and replaced it with a weaker defence which requires the RSE Licensee to have "complied with all of the covenants referred to in sections 52 and 53 and prescribed under section 54A, and all of the obligations referred to in sections 29VN and 29VO, that apply to the defendant in relation to each act, or failure to act, that resulted in the loss or damage". This has been supplemented by an additional requirement that a member obtain leave from the court to bring an action before the action is undertaken.

In AMP's view, the additional requirement is of little value because it is difficult to see a court refusing to allow a member to bring an action when the member has not had an opportunity to present the full case. In other words, a court is unlikely to deny a member the opportunity to "have his/her day in court".

AMP believes that the previous statutory defence should be reinstated as the revised provision unreasonably weakens the RSE Licensee's statutory defence (because of the need to show compliance with a very broad range of obligations) and is likely to have the effect of dissuading many otherwise well-qualified people from being prepared to take on a role as a director of an RSE Licensee. This outcome would be inconsistent with the Government's desire to substantially increase both the number and professionalism of independent directors of RSE Licensees.

Recommendation: That the Government reinstate the former statutory defence (under the former section 55(5) of the SIS Act) for an RSE Licensee in relation to investment decisions that the investment was made in accordance with the investment strategy adopted by the RSE Licensee.

10. Statutory defence for Intrafund consolidation by an RSE Licensee

Under the Stronger Super legislation, RSE Licensees are required to identify members with multiple accounts in their fund and establish rules for consolidating those accounts where the RSE Licensee believes that it is the best interests of the member to do so.

It is almost inevitable that we will see aggrieved members, who have had their accounts consolidated but, with the benefit of hindsight, consider that the consolidation was not in their best interests, and as a result seek compensation from the RSE Licensee through the Superannuation Complaints Tribunal or otherwise. This would be a very unfortunate outcome for an RSE Licensee that has simply implemented the requirements specified by Parliament.

AMP believes that where the RSE Licensee has established rules for account consolidation, has published those rules to its members and has conducted consolidations in accordance with those rules, the RSE Licensee should have a statutory defence against actions from members against the RSE Licensee in regard to the consolidation.

Recommendation: That the Government introduce a statutory defence in the SIS legislation for RSE Licensees against actions from members arising from the consolidation of member accounts where the consolidation has taken place in accordance with rules for such consolidations that have been established by the RSE Licensee and published to its members.

11. Lost super searches

Past industry practice has been for RSE Licensees to conduct lost super searches on behalf of their members (especially new members) and to then notify the members of any such accounts that the RSE Licensee has identified so that the member can make a decision about whether or not to consolidate their super. This was a quite effective process because members were only contacted when lost super accounts were identified.

However, the Stronger Super legislation removed the ability for an RSE Licensee to conduct such searches without the member's prior authorisation. Without an identified positive search outcome, it is much more difficult to get members engaged in this process. AMP is not aware of any identified problems that were arising under the previous process where the search was conducted by the RSE Licensee of a current fund of a member and suggests that RSE licensees should again be allowed to search for lost super on behalf of their

members without first obtaining the member's specific authorisation for the search.

Recommendation: That the ability for an RSE Licensee to conduct lost super searches on behalf of their members without first obtaining the member's authorisation for the search be restored.

12. Insurance definitions in super

In many superannuation funds the insurance definitions, most commonly for disability income protection insurance and total and permanent disablement insurance, don't always match the SIS conditions of release, resulting in the undesirable outcome in some cases where an insurance benefit is paid to the fund but has to be held in the member's account because the relevant condition of release has not been met.

To address this issue, and in accordance with its standards making power under Stronger Super, APRA has introduced a requirement that the insurance definitions for new members cannot be such as to result in an insurance payment in circumstances where the benefit cannot be paid out of the fund to the member (because the insurance definition is not aligned with the legislated conditions of release).

However, there are numerous circumstances where the definitions in typical insurance policies are more logical than those set out in the SIS conditions of release.

For example, self-employed members almost invariably seek income protection on an "agreed value" basis rather than on an "indemnity" basis[5] because for such people their income often falls in the period immediately prior to their disability being identified and this adversely impacts their entitlement under an indemnity based policy. However, the SIS condition of release effectively only allows payments on an indemnity basis.

Similarly, there are many occupations where it is more appropriate to have a definition of total and permanent disablement based on an inability to performs one's own occupation (as in some insurance policies) than the SIS condition of release which is based on an inability to perform any occupation for which one is reasonably suited by education, training or experience.

The result of forcing a change in insurance policies to match SIS conditions of release will be less suitable insurance arrangements for many members and a move to have insurance entirely outside of super for many other members (with consequent loss of group terms and other benefits on holding insurance inside of superannuation arrangements).

While AMP recognises the logic of aligning insurance definitions with conditions of release, we also note that there has not been a comprehensive reassessment of the SIS conditions of release since the introduction of SIS Over 20 years ago. AMP believes it would be timely to conduct a review of the SIS conditions of release at least so far as payments on the temporary or permanent disability of a member is concerned.

Recommendation: That the Government conduct a review of the SIS conditions of release, specifically with a view to determining what, if any, changes should be made to the conditions of release related to the temporary or permanent disablement of a member.

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[5] Under an agreed value basis, the monthly income to be paid under the insurance policy is agreed in advance. Under an indemnity basis, the monthly income is based on a percentage (eg 75%) of the member's monthly income immediately prior to the disability.