CORPORATE SUPER ASSOCIATION

ABN 97 799 893 065

PO box 508
Collins Street West VIC 8007
Tel: 03 8319 4075
Email: corpsuper@netspace.net.au
Website: www.corsuper.com.au

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The Manager, Contributions and Accumulations Unit
Personal and Retirement Income Division
The Treasury
Langton Crescent
PARKES ACT 2600

Email: intrafundconsolidation@treasury.gov.au

Dear Sirs

INTRA-FUND CONSOLIDATION OF SUPERANNUATION INTERESTS

We refer to the Exposure Draft legislation issued on 23 March 2012.

Background: the Corporate Super Association

Established in 1997, the Association is the representative body for large corporate not-for-profit superannuation funds and their employer-sponsors. We represent 35% of corporate fund assets and 30% of members of corporate superannuation funds. In general, these funds are sponsored by corporate employer sponsors with membership restricted to employees from the same holding company group, but we also include in our membership a few multi-employer funds with similar employer involvement and focus.

Many of the funds we represent include defined benefit divisions. Many of the defined benefit divisions are closed to new members, but there are also several that remain open. Many of the members are entitled to a combination of defined and accumulation benefits.

Consolidation proposals

Our comments relate to:

- Protection of trustees;
- Clarification of intention regarding types of accounts to be consolidated; and
- Timing of determination that a member's withdrawal interest is under $1,000.

References to legislation below are to existing or proposed sections of the Superannuation Industry (Supervision) Act 1993, unless otherwise indicated.

Protection of trustees

Conflict between members' best interests and obligation to consolidate

We have concerns regarding the risk exposure of trustees who make rules as provided in draft section 108A. The requirements of the section are not completely clear and these requirements may be implemented in different ways. We believe that it would be desirable for safeguards to be provided for a trustee that follows the minimum requirements set out in the legislation, to protect the trustee in the event of complaints from members and other interested parties in relation to matters resulting from consolidation of accounts including:

- loss of insurance benefit;
- loss of exposure to certain investment strategies;
- increased fees resulting from loss of member protection;
- family law implications of account consolidation.

Situations such as the above, and other situations, may give rise to a recognised or unrecognised conflict between the trustee's duty to act in the best interests of members and the obligation to consolidate as required by the legislation. We believe that the trustee should be protected under these circumstances if it follows the legislative requirements. Further, as indicated below, the legislative requirements should be clarified.

Requirement to establish rules versus plain legislative requirements

We are uncertain whether the proposed requirement to establish rules is intended to make it more flexible for trustees to choose the extent of account consolidation they may wish to pursue (for example, if they want to provide for account consolidation between active accounts, or from inactive accounts into an active account). However, given the risks outlined above, we would prefer to see the minimum requirements for account consolidation set as requirements of the SIS Act. Whether a trustee then implements the requirements by rules would be a matter for the trustee, but we believe that it is important that the the SIS Act should contain clear and universal requirements, as well as the safe harbour rules referred to above.

Trustees' failure to follow requirements through inability to identify accounts of the same member

We submit that trustees should be protected from liability on breach of the proposed legislation if they do not identify all inactive accounts of the same member. Despite all the current measures to facilitate this, there will not be universal ability for trustees readily to identify all multiple accounts, to establish quickly that there are similar rights in respect of benefits, and to implement the consolidation.

Until identification through TFN and other methods is implemented and tested, and until the requirements of the current legislation become very clear, we believe that it is inappropriate that strict liability offences be imposed.

The requirements of the legislation need to be made very much clearer in order to establish exactly what obligations are imposed on trustees.

This is discussed further below.

Clarification of intention regarding types of accounts to be consolidated

Inactive and active accounts

Proposed section 108A requires consolidation of inactive superannuation interests. From the draft legislation, it appears that what is required is that multiple inactive superannuation interests be merged into one inactive superannuation interest. We would like clarification as to whether it is also intended that inactive interests may be consolidated into an active interest, where there is an active interest in respect of the member and where this active interest has "the same rights and benefits" as the interests to be consolidated into it. This appears to be the intention from Example 3.1 at paragraph 3.26 in the draft Explanatory Memorandum. We would welcome clarification of this point.

We understand, from paragraph 3.21 of the Explanatory Memorandum, that the requirements of draft section 108A would be minimum requirements and that the trustee would be at liberty to establish rules that permit also the consolidation of active accounts. However, we have reservations, as indicated above under "Protection of trustees", about the risk exposure of a trustee who arranges for more comprehensive account consolidation than that minimum required by this legislation. Hence, we believe that it is important that the extent and application of the minimum requirements be made very clear.

Superannuation master trusts and multi-employer funds with sub-plans

In such funds, we submit that consolidation should be required only within the same sub-plan.

Accounts with same rights and benefits

We believe that the requirement for the account to be consolidated to have "the same rights and benefits" (s 108A(1)(a)(ii)) is not clear for reasons including the following:

- there is no clear understanding or established meaning for "the same rights and benefits";
- it is not clear whether accounts with even slightly different investment strategies selected have the same rights and benefits;
- strictly, an account with a different balance has a different benefit.

We would like to see these requirements clarified. One suggested approach would be to adopt the requirements under the successor fund transfer provisions and to require equivalent rights in respect of benefits.

Timing of determination that a member's withdrawal interest is under $1,000

We submit that an annual test time needs to be set for the determination of the member's account balance for the purposes of proposed paragraph 10(1)(b).

Please contact the undersigned on 03 9613 8872 to discuss these matters further.

Yours faithfully

Mark N Cerché
Chairman
Corporate Superannuation Association