

21 June 2013

The Treasury
Attention: Charter Group
Langton Crescent
PARKES ACT 2600

Email: supercharter@treasury.gov.au

Dear Sirs

Australian Custodian Services Association – Submission on Council of Superannuation Custodians

The Australian Custodian Services Association ("**ACSA**") is the peak industry body representing members of Australia's custodial and administrator sector. Collectively, the members of ACSA hold securities and investments in excess of AUD\$1.8 trillion in value in custody and under administration. Members of ACSA include National Australia Bank Asset Servicing, JP Morgan, HSBC, State Street, RBC Investor Services, BNP Paribas, Citi Transaction Services and Northern Trust.

On 5 April 2013 the Government announced it would establish an agreed Charter of Superannuation Adequacy and Sustainability and create a Council of Superannuation Custodians (**Council**) to serve as guardians of the Charter and ensure that any future changes to superannuation are consistent with the Charter. The Treasury released a discussion paper (**Discussion Paper**) and called for views on various questions raised in that paper.¹

Executive summary

ACSA supports the establishment of a Council with the functions described in the Discussion Paper. However, ACSA members are concerned by the adoption by the Government of the title "Council of Superannuation Custodians" for this new body as it is potentially confusing. It suggests that the Council has a role in relation to the administration or regulation of superannuation custodians. ACSA requests that the Government select another name for the new Council which does not use the word "custodian" or any derivative of that name.

¹ <http://www.treasury.gov.au/Policy-Topics/SuperannuationAndRetirement/supercharter/Discussion-Paper>

Australian Custodial Services Association

ACSA was formed in 1994 to represent the interests of the local custodial and investment administration industry, and continues to lead with innovation and efficacy today. Accordingly, the industry body and participants in the industry have been using the term "custodian" to describe the role that they perform for among others, superannuation trustees, for almost 20 years.

However, the term "custodian" has a history which predates the establishment of ACSA in Australia. The global custody product was christened by a Chase Manhattan manager in late-1974. The underlying services delivered by Chase were not new: several banks had provided settlement and safekeeping services on an international basis for many years. However, these activities were typically provided free-of-charge - and the functions therefore starved of resources - as part of investment management or other activities. So it is generally accepted that global custody as a product in its own right was born in 1974².

The name "custodian" is used to describe the services provided by those responsible for holding institutional client assets in the Australian market and globally.

What is custody? Who is a custodian?

By definition, custody involves being the legal owner of securities (generally held through nominee structures) and acting on behalf of superannuation trustees, and responsible entities of registered and unregistered managed investment schemes and others who owe their duties to the beneficial owners of the securities held by the custodian³.

The term "custodian" or derivatives of that term are used in a range of legal and regulatory sources including:

1. definition of "custodial or depository services" [section 766E Corporations Act 2001];
2. Cross Industry Circular No. 1 Custodian Requirements for APRA Supervised Entities;
3. ASIC Report 291 Custodial and Depository services in Australia Released 5 July 2012; and
4. ASIC Regulatory Guide 133 Managed investments: Scheme property arrangements [which uses extensively the term "custodian" and is currently under review by ASIC following public consultation]

² See http://www.globalcustody.net/new/industry_history/

³ Page 7, The Role of Custodians, ACSA website
http://www.custodial.org.au/uploaded_files/news_files/uploads/1335847172_109.pdf

It follows that there is embedded in existing industry documents the term "custodian" which has a recognised meaning which does not appear to be consistent with the functions to be performed by the Council. Further it is clear from these documents that there is a widely recognised understanding of the term "custodian", both in the financial markets and at law.

Custodians and superannuation

The name adopted by the Government for the new body would be of less concern were custodians not so integral to the operation of superannuation funds in Australia. All public offer superannuation funds in Australia will have engaged and use the services of a custodian (which custodian will almost certainly be an ACSA member). As such, the use of the term "superannuation custodians" in the Council's title is even more likely to mislead the public as to the purpose of this new body, and in particular, would suggest that the body has some role in the regulation or supervision of superannuation custodians.

Functions of the Council

It is clear from the Discussion Paper that the Council is not to have a role in overseeing, representing or reviewing the functions performed by superannuation custodians. Relevantly, the Discussion Paper indicates that the Council will be a body, independent of Government, which is to be established to provide advice to Government on superannuation policy. The Discussion Paper states:

The Council of Superannuation Custodians is to act as an impartial, expert superannuation body, effectively 'stewards' of the superannuation system. Its role could be to:

- *Assess the compatibility of proposed future superannuation policy changes or legislation referred to it against the Charter.*
- *Consult where required on issues referred to it by the Minister.*
- *Produce annual reports on the adequacy, performance and sustainability of the system.*
- *Conduct research and publish statistics.*
- *Make recommendations for improvements to the superannuation system⁴.*

⁴ Page 8, Discussion Paper



If you have any questions in regards to this submission, please do not hesitate to contact Lisa Simmons on (02) 9258 6000.

Yours sincerely

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Australian Custodial Services Association