

CORPORATE SUPER ASSOCIATION

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15 August 2012

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

Email: intrafundconsolidation@treasury.gov.au

Dear Sir

INTRA-FUND CONSOLIDATION OF SUPERANNUATION INTERESTS

We refer to the Exposure Draft legislation issued on 10 August 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.

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

Context of Proposed Measures

Paragraph 1.5 of the draft Explanatory Material indicates that the objective of the proposed legislation is to reduce the number of unnecessary and inactive interests in the superannuation system by requiring trustees to merge multiple interests within their fund.

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The intention is to reduce fees for the individual and costs for the fund, and to reduce duplicate insurance costs for the individual (paras 1.2 and 1.3).

We accept the desirability of merging interests that are both unnecessary and inactive. However, it may be impossible for trustees to make this determination on a case by case basis, as appears to be required by the current draft.

We believe that the current proposals impose unacceptable burdens and liabilities on trustees because of the requirement to make decisions in the best interest of each affected member. Further, we believe that the proposed overall ban on fees relating to the account consolidation is inequitable to other fund members.

We would support:

- Clear requirements in the law regarding the trustee's obligation to merge member account in specified circumstances;
- Clear provisions regarding the protection of trustees who have so acted; and
- The ability for trustees to recover fees in relation to investment changes (buy/sell spreads and other costs relating to liquidation and acquisition of investments) that have resulted.

Trustee Obligations

The current draft imposes requirements that are very onerous and are probably impractical to fulfil. These include the determining of each member's best interests on a case by case basis.

The proposed requirement under s 108A(1)(c) to establish rules requiring the trustee to merge a member's separate interests if it is in the best interests of the member to do so, is not a task that should be imposed on trustees. The requirement would imply a knowledge of the individual's personal situation which the trustee cannot be expected to possess and should not pursue unless licensed and authorised to provide personal advice to each member.

Whilst a trustee may be required under trust and/or superannuation law, under specified circumstances, to act in the best interests of members overall, it is a practically impossible task for a trustee to act in the best interests of individual members, and not an obligation that is imposed on trustees in any other legal context.

There is the additional consideration of the cost to the fund and its members of performing regular evaluations of this nature, in relation to each member with more than one interest/account.

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Protection for Trustees

The best interests approach above does not provide the trustee with clear authority to proceed with a consolidation of interests/accounts, hence does not provide the trustee with any protection in the event that, after the trustee has determined that it is in a particular member's interest to consolidate or not to consolidate, the member then loses out on investment returns, or suffers detriment to insurance arrangements, or has other actual or perceived adverse experience as a result of the trustee's decision.

In order to provide an outcome which avoids unlimited exposure to trustees as indicated above, the legislation must provide clear direction on situations where consolidation of interests/accounts must occur, and must further provide the trustee with statutory protection against claims from members.

Fees for Consolidation

Proposed paragraph 108A(1)(d) would forbid charging a fee for merging interests under the proposed requirements. Whilst it may be reasonable and possible to remove administration fees for accounts closure are not charged, we are concerned about potential loss to the fund as a result of inability to recover a buy/sell spread or other switching fees in cases where the consolidation results in part of the member's balance being moved from one investment option to another.

These charges are generally intended to recover the transaction costs incurred by the trustee in disposing of assets in the option the member has left, and reinvesting the proceeds in the new option. Such fees are not prohibited in relation to MySuper accounts, and failure to charge them could result in significant cross-subsidy, particularly where large balances are being consolidated.

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

Yours faithfully



Mark N Cerché
Chairman
Corporate Superannuation Association