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The Senior Adviser
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Comments on the Exposure Draft of the Superannuation Legislation Amendment (Further Measures) Bill 2012 ('Tranche 4' of the Stronger Super legislation)

VicSuper would like to provide this submission in relation to the Exposure Draft of the *Superannuation Legislation Amendment (Further Measures) Bill* 2012 (Bill).

We appreciate the opportunity to make a submission and would welcome the invitation to participate in any industry/public forums that relate to these matters.

About VicSuper Fund

VicSuper Fund is a Victorian based not-for-profit, public offer superannuation fund. VicSuper Pty Ltd is the Trustee and administrator of the Fund and we administer our services in-house.

VicSuper's administration fee structure consists of an administration fee of 0.28% pa of assets plus a weekly account keeping fee of $1.50, with the total being capped at $1,500 pa.

At 30 June 2012, VicSuper had over $9.1 billion in assets, 253,000 members and 17,200 participating employers.

Overall comment

We understand that the Bill's primary purpose is to put in place miscellaneous Stronger Super reforms, as well as to amend or clarify any matters in previous tranches. As we have no concerns with the content of the Bill as it currently stands, this submission covers items currently not in the Bill that we would like to be included.

Specific comments

Fee rules for MySuper

Many funds like VicSuper have an administration fee on a *percentage of assets* basis that is capped for high account balances, where the cap is at a level beyond which it is considered inequitable or unreasonable to charge the member an additional fee. In effect this means that we charge a sliding scale, where the percentage in the scale for assets above a specified account balance level is 0%. However the Superannuation Legislation Amendment (MySuper Core Provisions) Bill 2012 ('Tranche 1') requires all MySuper members to be charged the *same percentage* fee, which cannot be achieved if a sliding scale is imposed.

Unless a sliding scale is allowed for MySuper members, the current wording of Tranche 1 will result in MySuper members with high account balances **paying more** than Choice members, who can benefit from a fee cap under a sliding scale. This would be a disappointing outcome for MySuper members.

We submit that the imposition of a sliding scale for percentage-based fees should be allowed in Tranche 1 and amended via Tranche 4. This would be a *benefit* to MySuper members with large account balances. A simple change to draft SIS section 29VA(3) (and any related sections) is needed, whereby the words *same percentage scale* are used, not *same percentage*.

Definition of 'accrued default amount' – record of investment direction

The Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Bill 2012 ('Tranche 3') defines 'accrued default amount' in draft SIS section 20B.

It has been suggested to us by APRA that we need to have a record of an investment direction before being able to exclude an amount from being an accrued default amount. However draft SIS section 20B does not say this, it simply says that the member must have given us a direction. The current existence of a record of the direction is not mentioned.

For example, we have an option called the Equity Growth option, which has never been a default option in VicSuper. This means that the only way someone can be in that option is if they have given the trustees a direction to invest some or all of their money in that option. If a member is in that option, we were not intending to try to find a record of their instruction (which may be an archived, hard copy) as we know that this option has never been a default option, so there must have been an instruction. We therefore believe that draft SIS section 20B(1)(b)(i) excludes all money in that option from being an accrued default amount.

Some investment directions may have been given to a trustee many decades ago and those records may have been destroyed or lost.

It would be helpful if section 20B was amended to clarify that the trustee does not have to locate the instruction, which could have been given many years ago (longer than funds are required to keep records), perhaps to a trustee of a former fund (prior to a successor fund transfer) or to a former trustee of the current fund.

Definition of 'accrued default amount' for successor fund transfers

Draft SIS section 20B does not appear to cater for members in a fund as a result of a successor fund transfer. The definition of accrued default amount includes any amount where the member has not given the 'trustee' of the fund an investment direction. A likely interpretation of 'trustee' in this section is the trustee of the *current* fund.

If a member had chosen (say) the Cash option in a former fund, and that amount was transferred to the current fund's Cash option under a successor fund transfer, then there is no direction from the member to the *current* trustee to invest in the Cash option. A strict interpretation of the current wording is that the money in the Cash option in this circumstance is an accrued default amount because the current trustee has not received an investment direction. This appears to be an unintended consequence. The same result could apply if there has been a change in trustee within the current fund.

We suggest that section 20B be amended to deem any instruction given to the trustee of a former fund to be an instruction to the current trustee following a successor fund transfer. An appropriate change should also be made to cater for a change in trustee of the current fund.

Definition of 'accrued default amount' when a fund has had different default options in the past

Prior to 2001, VicSuper had different default options to the one we now have (which is called Growth – it will become our MySuper option). The default option arrangements prior to 2001 resulted in members going in either Capital Stable or Cash, some depending on their age and others on whether or not they were a public offer member. All that changed in 2001, when the default option for all future new members became Growth.

This means that we now have around 30,000 members with $1 billion spread across the Capital Stable and Cash options, in respect of which no investment option direction has been given. Under the current definition of accrued default amount, these members' accounts are accrued default amounts. This means that we will have to transfer them to the MySuper option by 30 June 2017 unless they opt out earlier (after we write to them). Given that these members have been in these options for over 11 years, some up to 18 years, we believe that they should be excluded from being classified as accrued default amounts.

We believe that, after over at least 11 years in these *low risk* options, these members would be unlikely to want us to move them to an investment option with a higher risk profile. We acknowledge that we would be writing to them and advising them of the proposed transfer, however this will be a huge task (30,000 members) and many are unlikely to respond on time on this important issue. In addition:

- if the prohibition on the capping of administration fees in MySuper is not lifted, then these members would be worse off in terms of administration fees, as we would be moving them from a capped product (non-MySuper) to an uncapped product (MySuper); and
- these members will be worse off in terms of investment management costs, as their current low risk investment option will have lower investment management costs than our proposed MySuper option.

Therefore we suggest that

- there should be an addition to proposed SIS section 20B(3) - a new sub-paragraph (e) - that exempts certain classes of members from having some or all of their benefit classified as an accrued default amount eg if they are currently in a lower risk and lower investment cost product than MySuper; and
- there should be an amendment to proposed SIS section 29WA so that an exemption granted under 20B(3) (as above) flows through to the investment of future contributions under 29WA (and any other relevant section) – that is, if the existing account balance does not have to be transferred to MySuper, then future contributions should not have to be invested in MySuper.

Alternatively, APRA could have the power to exempt certain classes of members on application by a trustee, or the legislation could allow the Trustee to "determine reasonable conditions" where an accrued benefit amount is exempt. These suggested words ("determine reasonable conditions") are copied from proposed new SIS section 68AA(3) re insurance. If it is reasonable for the trustee to decide on the terms that can apply to default insurance cover (eg whether or not someone has to be offered insurance at all), then it should be reasonable to allow a trustee to make a decision in regard to cases where the trustee is of the opinion that a member's account should not be treated as an accrued default amount. The onus would then be on the trustee to justify the exclusion to APRA.

Definition of 'accrued default amount' when a member has made an explicit investment choice for only part of their account

It is common for a member to request part of their existing balance to be invested in an investment option that is not the default option, when they want to move only part of their benefit. That is, many funds only want an instruction for that part of the account that needs to be moved, if the member has decided to leave some money in the current option and invest some in another option. VicSuper is offering term deposits to members from 2013 and this is how the term deposit arrangement will operate – we only want to know about that part of the benefit that is being invested in term deposits (the rest of the member's account will remain invested in the current option/s).

For example, a member may have $100,000 in our Capital Stable option into which they defaulted in 1997. The member may have never made an investment choice until they decide to move $30,000 into a term deposit in June 2013. In such circumstances we would argue that the member has made a decision to move $30,000 to the term deposit and leave $70,000 in the existing option. That is, we would argue that the member has made a choice in relation to 100% of their account, even though their explicit instruction was only in relation to part of their account. Our understanding of the current draft legislation is that the $70,000 in this example would be an accrued default amount.

We believe that draft SIS section 20B should be altered to say that any decision by a member to direct some or all of their account to a particular investment option should exclude the *whole* account from being classified as an accrued default amount and future contributions should not be required to be directed to MySuper.

Election to transfer accrued default amounts

The Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Bill 2012 ('Tranche 3') covers the election by an RSE licensee to transfer accrued default amounts.

Section 29SAA(1)(a)(i) allows an RSE licensee to not transfer an amount to MySuper where the member has directed the RSE licensee "in writing" to invest the money elsewhere.

Given the advances in technology over recent years, members can give instructions to trustees in many ways, not just in writing. Superannuation funds now accept such instructions over the web and over the phone (where calls are recorded).

We suggest that the words "in writing" be deleted.

Please contact me on 03 9667 9602 if you need clarification on any of the points raised.

Yours sincerely

Michael Dundon
Chief Executive Officer