

2 February 2018

Manager  
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Financial System Division  
The Treasury  
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Dear Sir or Madam

Thank you for the opportunity to comment on the draft legislation for the design and distribution obligations and the product intervention power.

We have confined our submission to a question, initially posed in the Proposals Paper of December 2016, as to whether there are any financial products that should be excluded from the design and distribution measures.

We note that this question has now been answered, in part, in the draft EM which states:

*MySuper products, margin lending facilities, securities to which an employee share scheme applies and ordinary shares. The regulations may also apply the new regime to additional financial products or provide additional exemptions from its operation.*

While we support the exemption of MySuper products, particularly as they are authorised by APRA and have to meet various conditions in section 29TC of the *Superannuation Industry (Supervision) Act 1993* (Cth), we believe that defined benefit (“DB”) funds should also be exempted from the distribution obligations.

DB “products” are akin to MySuper products, in that from the commencement of MySuper regime, DB funds were automatically exempted. In the Government’s response to the Cooper Review it was noted that:

*Defined benefit funds provide members with a certain retirement benefit regardless of the investment returns or fees. The Government considers that these funds should automatically qualify as a MySuper product in respect of defined benefit*

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*members and be able to continue to receive contributions in respect of such members that do not make a choice of fund.<sup>1</sup>*

Further, the EM of the core MySuper provisions stated that:

*...it is intended that where an employer fully meets their superannuation guarantee obligation with a notional benefit certificate from a defined benefit fund or scheme then they will be able to make additional contributions that the trustee will not have to pay to a MySuper product.<sup>2</sup>*

Thus to ensure consistency with the proposed MySuper exemption we submit that, DB “products” will also need to be exempted at section 993DB(2), as follows:

*993DB (2) This section does not apply to*

- (i) A MySuper product; or*
- (ii) A defined benefit product\**

There is no definition in law for a DB “product” (although there are a number of definitions relating to DB schemes, including a definition for a DB fund and for a DB member). We propose what we think is a workable definition of a DB product - restricted in its application to Corporations Law obligations - is required<sup>3</sup> as follows (under section 993DA Definitions):

***Defined benefit product is a class of beneficial interest in a regulated superannuation fund held by defined benefit members***

This exemption sits clearly within the policy intent of the current proposals, and its purpose would also follow current practice of exempting DB schemes from the MySuper obligations thus ensuring consistency across the existing regulatory framework.

Thank you for the opportunity to provide comments on the exposure draft. Should you wish to discuss these comments, in the first instance, please speak to Benedict Davies, Public Policy Manager on 03 8861 6670.

Yours faithfully



Kevin O'Sullivan  
Chief Executive Officer

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<sup>1</sup> Australian Government (2010). Stronger Super – Government response to the super system review, p. 44

<sup>2</sup> Explanatory Memorandum, Superannuation Legislation Amendment (MySuper Core Provisions) Bill 2011

<sup>3</sup> A definition of defined benefit product that applies more broadly to tax and superannuation law would create inconsistencies in existing law which should be avoided wherever possible.