

CORPORATE SUPER ASSOCIATION

SUBMISSION TO

TREASURY

ON

DRAFT PORTABILITY REGULATIONS

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BACKGROUND

1.1 The Corporate Super Association

The Corporate Super Association is Australia's representative body for major Not For Profit corporate superannuation funds and their corporate sponsors.

The assets of Association members amount to approximately \$60 billion, representing about 85% of total corporate superannuation sector assets in Australia and some 750,000 individual employee fund members.

1.2 Abbreviations used in this submission

The Association	The Corporate Super Association
The Draft Regulations	Draft Regulations under the SIS Act and the RSA Act, relating to portability of benefits, issued for public comment on 27 May 2003
The Paper	Consultation paper, <i>Portability of Superannuation Benefits</i> , prepared by the Department of the Treasury, Canberra, September 2002
RSA Act	Retirement Savings Accounts Act 1997
SIS Act, SIS legislation	Superannuation Industry (Supervision) Act 1993, and related legislation

1.3 Context of submission

The Draft Regulations were issued on 27 May 2003. Comments on the draft regulations have been invited from interested parties.

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2 GENERAL COMMENTS

We support the principle that Australians should take responsibility for and become better informed about their personal and retirement savings.

We recognise that the portability proposals have the objective of increasing public awareness of and interest in the management of retirement savings, and we support this objective. However, we have some concerns that to introduce full portability of superannuation in the current context may not achieve the objectives. The move to portability may be premature in the context of:

- current standards of public education about investment matters and superannuation generally;
- current public concern about the competency of advisers to provide sufficient information to an imperfectly educated public; and
- current public concerns about the level of information disclosure about fees and charges.

In the context of Not For Profit superannuation provision, in which our members participate, we are also concerned that full portability may leave members worse off. This is a potential result where an individual exercises a choice to leave an efficient collective investment in favour of an individually chosen investment, thereby losing the benefits of scale. These benefits include enhanced negotiating power, pooled resources, reduced fee levels, and greater investment returns arising from the diversification of a collective investment pool.

Nevertheless, we accept the general principle that an individual should not be trapped in a poorly managed fund and that it is useful to explore a transition to portability in a context where the individual Australians are well-informed about their choices.

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3 CONCERNS

3.1 Broad areas of concern

3.1.1 Need for a limitation on frequency of withdrawal requests

As currently proposed the regulations would not impose any restriction on the number of transfers each member would be permitted to request: hence multiple withdrawals could be made (in some cases on a regular basis after contribution by the employer). This would be costly in terms of administrative process and also, potentially, in terms of adviser fees and entry and exit fees.

3.1.2 Need for restrictions on fees

As currently drafted the regulations do not propose any statutory cap on exit fees or other fees relating to transfers under the proposed arrangements for portability. Given the current concern over fee levels, including member understanding and disclosure, it is undesirable to introduce a wide ranging scheme for ready transfer of benefits without setting limits to transfer fees.

3.1.3 Potential effect on fund liquidity

Trustees, in formulating fund investment strategies, are required, under section 52 of the SIS Act, to take account of matters which include:

- expected cash flow requirements; and
- the ability to discharge liabilities when they fall due.

As a very broad generalisation, the yield from less liquid investments tends to be higher over time than that from more liquid asset classes.

Ready portability of benefits would alter the liquidity requirements of a fund. In general, the anticipated period of membership would be expected to reduce. In addition, the timing of exits from the fund would be less predictable, hence a higher liquidity reserve would be needed. The average holding period for investments would reduce, and as a result of the shorter average holding period, the return on fund assets could on average be expected to decline. Hence, benefits available for members would also reduce. Thus the price of ready portability of benefits would be a reduction in the retirement savings of all accumulation scheme members.

3.1.4 Need for guidance regarding circumstances in which APRA would exercise its power to restrict transfers

The proposed regulations indicate that APRA would have the power to prevent transfers from a fund where the result would prejudice benefits in the fund or impair equity between members. This power could be exercised by APRA on its own instigation or as a result of a request from a fund.

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It is desirable that information and guidelines should be made available about the circumstances under which APRA would be likely to exercise its discretion whether unilaterally or at the request of a fund's trustee. This would assist funds in determining whether they would need to alter benefit design to avoid adverse selection of the types discussed at 3.2 below, or whether they could expect to receive an exemption from portability requirements because of specific circumstances.

3.2 Specific situations

We remain concerned regarding the following situations:

- a) Under the terms of some trust deeds or other governing rules a capital guarantee may apply to an accumulation interest in a defined benefit fund. If it is open to a member to use the protection of a capital guarantee for a period when returns are uncertain, and then to move to another fund where the return is market based when market conditions improve, there is scope for adverse selection to be exercised against the fund offering the capital guarantee.
- b) Some funds seek to reduce fluctuations in crediting rates on accumulation balances from year to year by use of an investment reserve. The objectives are to promote fairness between members and/ or to promote the understanding that returns are stable over time.

There is a hazard that where accumulation balances become readily portable, members may time their departure from a fund at the point where reserves have been allocated, making a point of re-entering when reserves have climbed again. This would reduce equity between members or could result in membership fluctuations at critical times. Hence, funds would be forced to abandon the practice of reserving, and lose the potential advantages that reserving may bring.

We understand that in at least one major fund where a capital guarantee as described in (a) above is provided, the actuary has indicated that if the regulations are made as currently drafted, it will be necessary to approach APRA to have the fund's ability to roll over amounts suspended under draft Reg 6.37. Failing such a suspension, the fund's rules will have to be changed to remove the capital guarantee, in order to meet the trustees' obligations to ensure that there is equity between members. Removal of the guarantee will be to the detriment of all members (but will preserve equity).

Similar concerns have been expressed about point (b) above.

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4 RECOMMENDATIONS

4.1 Capital guaranteed funds should be protected

We would recommend that portability be removed for accumulation balances which are subject to a capital guarantee or to smoothing of investment returns (whether or not these balances are linked to a defined benefit).

4.2 Deferral of portability proposals

We would support deferral of the proposed changes until there has been an opportunity for full consideration of the risks of poorly informed decision-making by individual Australians.