

# CORPORATE SUPER ASSOCIATION

May 2008

General Manager  
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The Treasury  
Langton Crescent  
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## **Submission on Temporary Residents and Superannuation**

Dear Sir

I refer to the Consultation Paper, *Temporary Residents and Superannuation* issued by the Government in May 2008. The Corporate Superannuation Association welcomes the opportunity to provide comments.

### **1 Background: the Corporate Superannuation Association**

The Corporate Superannuation Association represents twenty-three major not-for-profit corporate superannuation funds and their corporate sponsors. These funds are most of the largest funds in the corporate fund sector. The assets of Association members amount to approximately \$34 billion, representing about 46% of total corporate superannuation sector assets in Australia. In general, the 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 to our stand alone member funds.

We have the following comments in relation to the Paper and the proposals.

### **2 Concerns with the proposals**

We have some major concerns with the proposals in the Paper. It may be that, in light of the data Treasury and the ATO have on our question at section 3 below, the proposals will provide major assistance in eliminating the problems of “lost” super. In light of the difficulties we see with the approach, we would need to be convinced that the proposed solution will provide major assistance in seriously reducing the number of lost accounts.

Otherwise, in light of the loss of the benefit of superannuation earnings, insurance cover and other amenities associated with corporate superannuation fund support, we would not be in favour of the proposals and urge that they be dropped. We would support only a transfer to an ATO account in respect of a temporary resident for whom payment a DASP on departure proved impractical.

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## **3 How much of the lost super problem is caused by temporary residents?**

We understand that the proposals have been raised in the context of the larger problem of unclaimed superannuation accounts. We would like to see an analysis of the contribution of non-residents' accounts to the unclaimed superannuation problem. Questions we have are:

- What is the magnitude of the contribution of temporary residents to the problem of lost accounts? Has this been quantified:
  - i. Is the percentage of non-residents known, as a proportion of total unclaimed super account holders?
  - ii. Is the percentage of non-residents known, as a proportion of unclaimed super accounts where the holders are not contactable?
- Does the major difficulty arise from the fact that an active super account is not available (for a non-resident) to which a compulsory roll over of lost money could be made? In these cases is there, nevertheless, an address available for contact? Should trustees be required to make one attempt to reach an overseas address? Is there an undue inhibition about making contact with former fund members who are now overseas residents?

## **4 Facility for immediate payment to ATO (section 2 of the Paper)**

The funds and employers of our Association are divided on this. Some would support an approach, for simplicity's sake, where no temporary resident could become a member of an Australian superannuation fund and the ATO becomes the recipient of all obligations for these temporary residents. This approach is argued by its supporters to be simplest from the point of view of both compliance and member account cost minimisation. Others have cited the following potential problems:

- Employees with otherwise similar working conditions being treated differently for superannuation purposes;
- Difficulties with employment and award conditions;
- Potential breaches of SG requirements if a person is misclassified and if the proposal in section 2 of the Paper is followed that the contribution to the ATO will not meet SG requirements if the person is not a temporary resident.

We conclude that while it may assist some to provide the ATO facility, there are potential issues and if the facility is available, it should be an option only (not compulsory in respect of all temporary residents).

Hence we would support an approach where the employer is free to choose between:

- using the ATO facility as the immediate default destination for all contributions for non-residents, or
- admitting temporary residents, on the same basis as other employees, to the fund of choice. If required to transfer balances for employees listed by the ATO, the trustee would comply with this requirement.

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## **3 Transfer to ATO annually (section 3 of the Paper)**

We have difficulty with the proposal at 3.2 that funds would be required to transfer the entire withdrawal benefit to the ATO, presumably at a notice date some time after Royal Assent. We have a particular problem with the proposed transfer of existing balances as well as current year contributions. Some balances held for temporary residents are quite significant and include more than just SG support. Some may include rollovers, salary sacrifice amounts and significant non-concessional contributions. These amounts, if transferred to the ATO, will under the proposal set out at section 4.2 of the Paper, lose out on anticipated fund earnings, and because of preservation rules, cannot be withdrawn when the member realises that the expected earnings will not be generated. We consider that this retrospective aspect is highly problematic and inequitable.

## **4 Interest payments on ATO balances**

We have serious difficulties with the proposal that no interest will be paid on the ATO balances unless the person becomes a permanent resident. We note that an argument is put that this treatment is comparable with what happens in some overseas jurisdictions (however, we would like to see definite evidence that, for example, UK national insurance contributions are permanently forfeit within 5 years of departure). We are seriously concerned about a proposal that would result in employers paying an additional significant tax, non-refundable and not subject to interest, in substitution for providing, at the same cost, a valuable employee benefit which grew with fund earnings and generally provided life insurance cover.

We are concerned that what is effectively being proposed is that Consolidated Revenue should enjoy the earnings and save the cost of insurance protection which is currently available to these employees.

## **5 Five year time limit for access**

A number of our members have indicated that they do not believe that the proposed five year time limit for access to the benefits (section 4.3 of the Paper) is long enough, given that the benefits are then irrevocably forfeited. Ten years has been suggested as an appropriate period before these employees lose all rights to these contracted benefits.

## **6 Insurance aspects**

Insurance aspects that have been raised by our members are as follows:

- We note that (per section 6.2) the Government may not find it appropriate to provide cover via the ATO accounts. However, employers who choose the ATO direct contribution option will do so for the sake of simplicity and will not want to have the requirement to arrange separate insurance, so this could pose some difficulty.
- Some funds self-insure in relation to disability and death and the loss of the long-term balances of the members could raise the costs of providing this cover.
- Essentially, we are concerned that what has been a long-standing and smooth running arrangement for temporary residents will be disrupted, and to the detriment of the workers and the employers.

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## **7 Application to DB funds**

At 6.8 in the Paper, it is proposed that the arrangements apply to accumulation interests, and to defined benefit interest when they crystallise. We foresee some complexity in relation to situations where members are entitled to benefits described as the higher of (contributions plus interest) or (defined benefit) and are keen to avoid situations where an employer is involved in unexpected and unintended costs on an annual basis. If the proposals are to go ahead for accumulation members, we urge that all members with defined benefit interests should be excluded from the arrangements.

## **8 Structure as a tax**

It is proposed at 3.4 in the Paper that the transfer of balances to the ATO should be treated as a 100% tax on the aggregate withdrawal benefits of the temporary residents' accounts. We believe that this could raise some issues of a constitutional nature.

## **9 Protection for employers and trustees**

The Paper, at Section 2, raises the issue of additional obligations that employers may have arising from award or similar obligations. We urge that any legislation to implement any of the proposals should clarify that the legislation overrides the requirements of contracts and awards where conflict arises. Further, where any contractual or award requirements are to be overridden, the legislation should provide absolute protection for employers and trustees who comply with the requirements in the legislation.

Other legal aspects

Our members have raised concerns about the potential difficulties, in terms of permitted actions under deeds, trustee obligations and in general, of a trustee permitting a member's balance to be transferred into consolidated revenue. This is in a context where it is known that the member will not longer receive the benefit of fund earnings, insurance protection and the other benefits which were envisaged when the employer contributed for the benefit of the member and the member accepted employment on specified terms which included the superannuation benefit and concomitant insurance arrangements.

## **10 Conclusion**

We submit that:

- Our preferred option would be for the current arrangements (where an employer must provide minimum SG contributions, and abide by fund choice arrangements where applicable), to remain.
- Difficulties with "lost" super could be dealt with as effectively on the non-resident's departure. The balance of any temporary resident who cannot be located and paid a DASP by their fund should immediately be transferred to an ATO account.
- In the event that the proposals are implemented we believe that it is essential that complexity should be avoided for defined benefit funds. We propose that any employer with a temporary resident employee who is also a defined benefit member should be exempted from the arrangements in respect of that employee.

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- It is essential that conflict be avoided between award and contractual requirements and any new requirements under the legislation (to avoid double support requirements). If employers are to be required to comply with provisions in the legislation that conflict with award and contractual requirements, any contractual or award requirements are to be overridden, and the legislation should provide absolute protection for employers and trustees who comply with the requirements in the legislation.
- We deplore the suggestion that no earnings should be paid on the proposed ATO accounts for temporary residents. We consider that this breaches fundamental principles of equity, and that interest should be paid at some rate related to the long term Treasury bond rate.
- We are concerned about the insurance aspects of the proposal and consider that the proposals will involve employers in higher insurance costs or expose the employees to risks where they are not protected. We believe that costs are increased even where the employees continue to be members of the employer-sponsored fund, because the annual removal of balances will in a number of cases reduce the capital from which the insurance is funded.

Please contact my office on +61 3 9620 5155 or by e-mail to [corsuper@netspace.net.au](mailto:corsuper@netspace.net.au) if you would like to discuss the above.

Yours sincerely



Chief Executive Officer

Corporate Superannuation Association