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Dear Sir/Madam

**Re: AUSTRALIANSUPER SUBMISSION TO TREASURY – PROPOSALS PAPER  
'DESIGN AND DISTRIBUTION OBLIGATIONS AND PRODUCT INTERVENTION  
POWER'**

AustralianSuper welcomes the opportunity to respond to the Proposals Paper above.

**About AustralianSuper**

AustralianSuper is Australia's largest single superannuation fund and is run only to benefit members. We don't pay commissions to anyone to recommend us, nor do we pay dividends to shareholders. The fund has over 2.1 million members and manages over \$105 billion of members' assets. Our sole focus is to provide the best possible retirement outcomes for members.

**Issue of consumer trust**

Trust and consumer confidence in the financial system have been eroded by the stream of investment and misselling scandals in the financial services sector in the last decade. The conduct of gatekeepers in some parts of the financial services sector has demonstrated that disclosure alone is not enough to protect consumers. AustralianSuper therefore endorses measures to promote fair and transparent treatment of consumers in the financial system beyond disclosure requirements.

Reforms to progress the application of proposed measures is timely, however they need to be considered in the context of Australia's superannuation system. In this submission therefore, AustralianSuper responds only to those questions relevant to superannuation and highlights where the reforms may jar with existing requirements. This includes the application of product issuer obligations for issuers of default and choice superannuation products, and the distribution of default superannuation products. Specifically we address:

- i) Target market obligations for issuers of default superannuation products (Question 10)
- ii) The benefit of applying obligations to MySuper products (Question 1)

- iii) Definition of distributors (Question 6)
- iv) Implications of obligations on employees as distributors of default superannuation products (Question 16 & Question 19)
- v) Product issuer obligations in the context of choice superannuation products (Question 10)

### **Application of product issuer obligations to Australia's default superannuation system**

The Proposals Paper emphasises the concept of buying and selling financial products however, under Australia's compulsory superannuation system, many Australians do not 'buy' a superannuation product but are defaulted into one. The design of this system, which has recently been strengthened by the MySuper reforms, has implications for the application of obligations outlined in the Proposals Paper for default product issuers.

#### *Target market obligations in the context of a default system*

Key obligations for product issuers suggested by the Proposals Paper are the:

- i) Identification of appropriate target and non-target markets for products
- ii) Consideration of target market characteristics including proximity to retirement, levels of income and wealth, level of financial literacy and access to financial information

In the context of Australia's default superannuation system, the obligations for issuers of default superannuation products regarding the identification of target markets is unclear. Default target markets in this context would be subject to the positive obligations imposed on employers under the *Superannuation Guarantee (Administration) Act 1992*, and shaped also by the demand created by changes in superannuation laws.

The breadth and diversity of this market means that a default product is designed for an average member without reference to the characteristics suggested in the Proposals Paper, such as levels of income and wealth. Indeed, the default system has been designed under a structure that implicitly accepts that issuers of default superannuation products will not know key personal financial circumstances of its membership, but can nonetheless design a product to meet the needs of the average default member.

AustralianSuper believes the obligations for product issuers to identify target and non-target markets and to consider specific characteristics of that target market in default superannuation are problematic.

### *Benefit of applying obligations to MySuper products*

There is a question about whether such obligations should apply in relation to MySuper products.<sup>1</sup> Following recommendations from the Super System Review in 2010, the default superannuation system in Australia has undergone significant reforms with the introduction of MySuper products. MySuper products are authorised by APRA and are the only products eligible to accept contributions from employers on behalf of employees who do not make a choice of fund for their compulsory superannuation contributions. MySuper products are subject to a higher level of regulation compared to other superannuation products, and financial products generally, both from a design and intervention perspective.

One of the aims of the MySuper reforms is to enable members to compare funds more easily based on fewer key differences. The design of MySuper products is therefore subject to legislative restrictions on product design including fee structures, investment strategy and default insurance.

MySuper products are also required to meet specific ongoing performance and fee requirements. In the event that a product does not continue to meet these requirements, APRA has the power to intervene to protect consumers by revoking an issuer's authorisation to offer a MySuper product under the *Superannuation Industry (Supervision) Act 1993*.<sup>2</sup>

It appears that the proposed design and distribution obligations and product intervention power will apply to MySuper products and overlay further regulatory obligations to the MySuper regulatory regime. As such, AustralianSuper is seeking clarification about the proposed regulatory benefits of including MySuper products under the proposed regime.

### **Distribution in the context of a default system**

Distributors for default superannuation products includes financial advisers (except when providing personal advice), and employers, who distribute default superannuation products to employees through modern awards, enterprise agreements and other default arrangements.

Employers may also receive direction from their employees about which fund the employee would prefer their compulsory superannuation contributions are made to – in this sense it is difficult to consider an employer as a distributor – they are recipients of instructions on how to deal with compulsory superannuation contributions.

### *Definition of distributors*

The Proposals Paper defines distributors as an entity that arranges for the issue of a product or that:

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<sup>1</sup> MySuper products defined in Section 29TC of the *Superannuation Industry (Supervision) Act 1993*

<sup>2</sup> Section 29U of the *Superannuation Industry (Supervision) Act 1993*

- i. Advertises a product, publishes a statement that is reasonably likely to induce people as retail clients to acquire the product or make available a product disclosure document for a product; and
- ii. Receives a benefit from the issues of the product for engaging in the conduct referred to in i) or for the issue of the product arising from that conduct

Employers often make product disclosure statements for superannuation products available to employees. In addition, employers arguably receive benefits from superannuation funds (product issuers) in the form of support to comply with superannuation guarantee obligations. On this basis employers may be defined as distributors and therefore subject to the distribution obligations suggested in the Proposals Paper.

Given employers are bound by legislative and regulatory requirements under *The Fair Work Act 2009* and the *Superannuation Guarantee (Administration) Act 1992*, when they distribute superannuation products, AustralianSuper contends that employers should be exempt from the definition of distributors of financial products when engaging in dealing activities regarding default superannuation.

If employers are defined as product distributors, this will create additional compliance requirements for those who are ultimately distributors of default superannuation products as a result of legal obligations. In AustralianSuper's case, this would place additional obligations on over 250,000 employers, a significant proportion of whom are small businesses.<sup>3</sup>

The benefit of asking employers to confirm and provide data to show that products are being distributed in accordance with a superannuation fund's expectation in a default superannuation environment is questionable and potentially creates a regulatory burden.

### **Application of obligations to superannuation choice products**

AustralianSuper supports the application of the proposed obligations to choice investment products. A member's choice to move away from a MySuper product to a 'choice' superannuation product has significant implications for the long term. Choice products can vary considerably in terms of diversification of investment, liquidity and risk. Choice accumulation and pension products are regulated under the *Superannuation Industry (Supervision) Act 1992*, but are not subject to the product design regulation inherent in MySuper products.

AustralianSuper believes the current disclosure-based system is not necessarily adequate to support Australians seeking to make a choice regarding their superannuation. As such, implementing obligations for issuers of choice superannuation products to identify target markets for products, to consider specific

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<sup>3</sup> AustralianSuper considers that this figure may be up to 80 percent of sponsoring employers of AustralianSuper, based upon the reported numbers of employees on whose behalf the employers make contributions to AustralianSuper.

characteristics of that target market and to articulate why a product is appropriate has the potential to benefit members making a choice regarding superannuation.

Therefore, AustralianSuper believes that the design and distribution obligations suggested in the Proposals Paper should apply to all choice superannuation products including retirement products. We await the development of the Comprehensive Income Products for Retirement (CIPR) framework in order to consider whether such obligations should apply for CIPRs.

If you have any questions of us or would like further information please do not hesitate to contact Claire Heeps on 03 8648 3848 or [cheeps@australiansuper.com](mailto:cheeps@australiansuper.com) in the first instance.

Yours sincerely

A handwritten signature in black ink, appearing to read "Louise du Pre-Alba". The signature is written in a cursive, flowing style.

Louise du Pre-Alba  
Head of Policy