



2 June 2010

The Hon Chris Bowen MP
Minister for Financial Services, Superannuation and Corporate Law
PO Box 6022
House of Representatives
Parliament House
CANBERRA ACT 2600

By email: Chris.Bowen.MP@aph.gov.au

Dear Minister

Joint submission regarding the deductibility of disability benefit premiums

This joint submission is provided by the Association of Superannuation Funds of Australia (ASFA), the Australian Institute of Superannuation Trustees (AIST), the Corporate Super Association (CSA), the Institute of Actuaries of Australia (IAAust), and the Investment and Financial Services Association (IFSA).

First of all, we welcome your announcement of 10 October 2009 and subsequent Media Release (NO. -027) in relation to the Government's decision to provide transitional relief to complying superannuation funds for the deduction of insurance premiums for disability superannuation benefits (TPD benefits). We also note that the Treasury has released a consultation draft of the amendments to introduce the transitional arrangements. We are willing to participate in that consultation.

We also acknowledge that the prevailing view of the Australian Taxation Office (ATO) is that there has been no change to the interpretation of the law following the Simpler Super changes. However, the industry is strongly of the view that the 2007 rewrite of the law permitted a new interpretation by the ATO, despite the Government of the day indicating that no change in the law was intended. Further, even though the deferral of the application of the current provisions until 1 July 2011 will reduce the disruption to the superannuation industry to some extent, we consider that a better long term solution is necessary in order to avoid:

- significant cost implications for almost all large funds and for many self managed funds (irrespective of whether insurance policy provisions are amended or retained);
- a loss of existing entitlements for members who may become seriously disabled in future and find themselves exposed as long standing benefit entitlements have been removed;
- confusion for members with continual tinkering with the rules likely to lead to a further loss of confidence in the superannuation system;
- difficulties for actuaries who may be unable to obtain appropriate statistics to prepare the necessary tax certificates in a professional manner; and
- additional costs and inefficiencies for insurers who will be effectively required to offer more than one type of TPD definition and hence more than one type of policy.

In relation to the significant cost implications for funds referred to above, where a fund amends the benefits it provides to accommodate the change in the law from 1 July 2011, the additional costs not only includes any necessary amendments to trust deeds, insurance policies and member disclosure documents but also includes the costs associated with handling additional member complaints and dispute resolution.

We believe that this new law will result in the loss of tax deductibility for a proportion of insurance premiums that is likely to be significantly less than 1% in aggregate of the total premiums paid by superannuation funds. We expect that the increased tax revenue, spread across all superannuation funds, will be less than \$1.5 million a year but the costs of implementation significantly greater. This is an extremely small amount compared with the size of the superannuation industry which has approximately \$1.2 trillion in assets.

In order to achieve this very small cost saving, we are very concerned about:

- the very significant costs that will be incurred by all funds, irrespective of whether they change their existing insurance policies or retain them;
- the greater complexity and inefficiencies that will be introduced; and
- the resultant adverse impact the changes will have on members' confidence in superannuation.

Given that the Super System Review panel has been asked to comprehensively examine and analyse Australia's superannuation system, we believe that the Government is genuinely interested in ensuring that the superannuation system operates efficiently. Unless this matter is addressed now, these changes to the deductibility of disability benefit premiums will mean greater inefficiency and cost, albeit deferred until 1 July 2011.

We therefore request the Government to urgently consider what disability benefits it would like superannuation funds to provide on a tax preferred basis. We believe that they should include:

- permanent disability benefits where the member is unlikely ever to be gainfully employed in a capacity for which he or she is reasonably qualified because of education, experience or training;
- permanent disability benefits where the member is unlikely ever to be able to perform their own occupation (note, this is generally limited to professional and specialised occupations and has significantly higher premiums which limits its take up);
- certain defined disabilities, such as the loss of two limbs (or one eye and one limb);
- certain disabilities defined in a manner covering the member's permanent inability to perform specified daily living skills (particularly relevant to those who are no longer in the workforce, casuals and part-time workers);
- terminal medical conditions;
- other insured benefits that the industry believes should receive some consideration by the Government, such as trauma cover.

In the absence of a tax deduction for some of these benefits, it would be a rational financial decision for funds to withdraw the offending benefits that do not comply. However, this will only be achieved at significant cost to the industry and therefore ultimately fund members. Such a change will also require funds to explain to members why any benefits have been changed or removed. In the subsequent event of a member not being able to claim on the fund's insurance policy, there will

be further opportunity for members to be aggrieved by this decision. In other cases, due to restrictive amendment powers in a trust deed, it may not be possible to remove or change existing benefits. In such cases it would be necessary for the relevant funds to continue existing benefit and insurance arrangements and to amend administration systems so that only the resultant partial tax deduction is passed onto members.

Of course, we are willing to work with the Government to implement the announced transitional provisions, however we urge you to consider the longer term as well and to amend the law in a manner which reverts to how the whole industry understood it applied before Simpler Super.

If the Government's decision is based on concern that this would open up the possibility of unintended outcomes, such as the use of insurance premiums to provide new benefits not currently provided, then we would also be happy to work with the Government to develop legislation that would avoid such a risk.

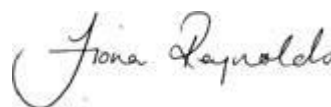
We would, of course, be pleased to discuss this joint submission further with you, including providing you with a more detailed analysis of the expected cost savings for the Government and the additional costs that superannuation funds will incur if the transitional provisions are not continued beyond 1 July 2011.

We would also like to stress the importance of an early resolution to these issues as, if ongoing relief is not to be provided past 30 June 2011, trustees and insurers will need to make significant changes to insurance policies and/or systems. Further, as noted above, it will be necessary for some trustees to amend their trust deed and member disclosure documents.

Yours sincerely



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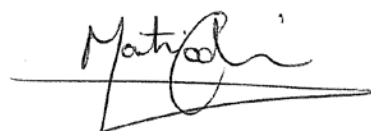
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