The Association of Superannuation Funds of Australia Limited
ABN 29 002 786 290
ASFA Secretariat
PO Box 1485, Sydney NSW 2001
p: 02 9264 9300 (1800 812 798 outside Sydney)
f: 02 9264 8824
w: www.superannuation.asn.au

29 September 2010

The Hon Bill Shorten MP
Assistant Treasurer
Minister for Financial Services and Superannuation
Australian Parliament House
CANBERRA ACT 2600

Dear Minister

RE: **Superannuation Legislation Amendment Bill 2010**

The programme for legislation to be introduced to the parliament this session includes the *Superannuation Legislation Amendment Bill 2010* ("the Bill"), which amongst other things proposes to legislate the announced transitional relief for income tax deductibility for insurance cover relating to total and permanent disability ("TPD") within superannuation funds.

ASFA is concerned that the legislation as drafted does not provide the relief previously announced by the Government in its media release of 13 October 2009. The announcement stated that:

- An amendment would be made to the tax law to provide transitional relief to complying superannuation funds for the deduction of insurance premiums for disability superannuation benefits (TPD benefits);
- The arrangements would defer the application of the provisions in the tax law governing deductibility of insurance premiums for superannuation benefits to 1 July 2011; and
- This will ensure that the current industry practice for deducting TPD premiums will apply from 1 July 2004 until 30 June 2011.

Based on these words, the industry had a clear expectation that the relief would extend to funds that self-insure. This is because part of the current industry practice for deducting TPD premiums is to deduct the notional premiums calculated by the actuary where part or all of the cover is self-insured.

However, it has been drawn to our attention that the present Bill does not extend to that part of the TPD cover not acquired by superannuation funds from insurance companies (i.e. any self-insured portion).

We understand from discussions with Treasury that the rationale for restricting the transitional relief to the part of TPD cover acquired, and not to the part that is self-insured, is that the relevant parts of the definition of "permanent incapacity" in the *Superannuation Industry (Supervision) Regulations* are broadly equivalent to those in the relevant definition of "disability superannuation benefit" in the *Income Tax Assessment Act*. On this basis, it was determined that it would be impossible for a superannuation fund to self-insure in relation to benefits that do not satisfy the

definition of “disability superannuation benefit”, as the resultant benefits could not be paid out to the member under the SIS Regulations. Therefore there was no requirement for transitional relief for the self-insured part of any TPD cover.

However, it would appear that, in drafting the provisions the situation of those superannuation funds that are not subject to the *Superannuation Industry (Supervision) Act 1993* or regulations has been overlooked.

Specifically, a number of State Government funds are regulated by specific legislation in their respective States. Pursuant to such legislation, a number of these funds pay out TPD benefits in circumstances not within the definition of “disability superannuation benefit”.

The most common example is the typical arrangement for police personnel in most States. Generally, TPD benefits are payable to police personnel if they are “unable to carry on the duties of a constable”. This would result in payouts to a police officer notwithstanding that he or she does not meet the required definition of:

- *“unlikely to again engage in gainful employment for which the member is reasonably qualified by education, training or experience*” (as required by the definition of “permanent incapacity” in SISR); or
- *“unlikely that the person can ever be gainfully employed in a capacity for which he or she is reasonably qualified because of education, experience or training”* (as required by the definition of “disability superannuation benefit” in ITAA97.

ASFA has been advised that more than 50% of the total deductions claimed for death and disability deductions claimed by some State Government superannuation funds relate to these extended arrangements for payment of TPD benefits, as required by relevant State legislation. On this basis, the denial of the present deduction (and potentially the failure to provide permanent relief in the specific circumstances of State Government or other funds not regulated by SIS) will represent a large annual additional tax cost to the affected funds. (The direct annual cost for one state Government is estimated at approximately $45 million.)

ASFA wishes to draw to the Government’s attention that under the current bill, the loss of deduction to these State Government funds will result in an increase in the unfunded liabilities within the funds. It is possible that affected State Governments may seek to have these matters taken into account in the broader context of Federal – State Government financial relationships.

We will continue to work with Treasury with a view to amending the Bill to achieve the optimal public policy outcome.

Yours sincerely

Pauline Vamos
Chief Executive