Thursday, 16 August 2012

Manager
Contributions and Accumulations Unit
Personal and Retirement Income Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Sir or Madam,

Superannuation Fund Notification

On behalf of the Board and Management of UniSuper, we welcome the opportunity to comment on Exposure draft – Superannuation Fund Notification.

Background on UniSuper

UniSuper, established in 1983, was initially called the Superannuation Scheme for Australian Universities (SSAU), and was a defined benefit (DB) scheme modelled broadly on then contemporary DB schemes in the Australian public sector and overseas. The benefit design from its outset was for a scheme with full portability of benefits across all participating employers, and coverage of all permanent employees in the sector, including general, academic and professional staff.

The multi-employer and industrially-inclusive nature of SSAU led to some important distinguishing features from its commencement, in particular:

- a fixed contribution rate of 14% of salary p.a. for employers and 7% for members;
- by covering the whole university sector, members can maintain defined benefit membership when transferring between employers;
- members can defer their benefits (so maintain membership) through periods when not employed in the university sector;
- a formula-based benefit related to member’s salary, tenure and employment experience.

Over its foundation years, SSAU succeeded in obtaining close-to complete coverage of permanent employees in the Australian university sector, and in “folding in” a large number of legacy DB superannuation and pension schemes from individual institutions on a successor fund and/or optional transfer basis.

In the late 1980s, with the advent of Award Superannuation, a second multi-employer scheme, the Tertiary Education Superannuation Scheme (TESS) was established as an accumulation fund to accept the new 3% award (and later SG) contributions of employees who were not eligible to join SSAU, such as casual and short-term contract staff. The vast majority of existing and future SSAU members also became TESS members for this 3% award contribution.
In 1998 an accumulation category was introduced as an alternative to defined benefit membership in SSAU. This is an accumulation based benefit division, now known as Accumulation 2, based on the same 14% employer contributions and death and disablement benefits offered through the DBD.

Over the ensuing years, both SSAU and TESS operated side by side as dedicated superannuation providers to the university sector with a common administrator (UniSuper Management Pty Ltd), until the two funds formally merged in 2000 to form UniSuper Limited as it exists today.

Today, the original SSAU scheme continues on in the form of the UniSuper Defined Benefit Division (DBD) and Accumulation 2, which remain funded by the original 14% employer contribution. The original 3% TESS award employer contributions are either held in an associated DBD accumulation account, an Accumulation 1 account or an Accumulation 2 where the member receives 14% employer contributions.

DBD members and Accumulation 2 members received the flexibility to reduce their contributions below the standard 7% but at present the vast majority still contribute at the full rate. Where a member reduces their member contribution rate, the additional 3% employer contribution will be redirected to the DBD and DBD benefits are appropriately adjusted.

In summary, UniSuper members can receive employer contributions to:

**DBD:** Permanent employees generally receive 14% employer contributions. They generally also receive an additional 3% (i.e. for a total employer contribution of 17%) to an associated accumulation account (i.e. the former TESS account); or

**Accumulation 2:** Permanent employees generally receive 14% employer contributions. They generally also receive an additional 3% (i.e. for a total employer contribution of 17%) to the account (i.e. the former TESS account); or

**Accumulation 1:** Other employees receive their Superannuation Guarantee contributions.

The DBD remains the default option for new permanent employees upon their commencement of employment, and there continues to be full portability of UniSuper benefits across all 37 participating universities around Australia, as well more than 400 employers within the broader higher education and research sector (e.g. various medical research institutes, subsidiary companies, and commercial spin-offs).

**UniSuper's comments on the Exposure Draft and the Explanatory Memorandum**

Sections 1 to 4 of the proposed Schedule insert new definitions into the Corporations Act, including a definition of "defined benefit interest". This definition in turn relies on another definition from the *Superannuation Industry (Supervision) Regulations 1993*. This approach is in contrast to other aspects of Stronger Super which rely on the definition of "defined benefit member" in the *Superannuation Guarantee (Administration) Act 1992*.

We submit that this raises a number of practical issues.
Firstly, the exemption for defined benefit funds only applies to contributions made to a member's defined benefit interest rather than all contributions on behalf of a defined benefit member. It is not perfectly clear what this will mean in practice. Presumably, funds will continue to report contributions to the defined benefit component within the existing timeframe (ie six months of the end of a reporting period, pursuant to Corporations Act, section 1017D(3)) but will now be required to report contributions to the accumulation component at an earlier date (ie within 42 days, pursuant to new section 1017CA(3)). If it is the policy intent to create two distinct and separate reporting obligations for hybrid funds, we think the policy will create member reports that are both confusing for members and difficult to administer for funds.

Secondly, even if these two distinct reporting obligations coexist, we contend that there are further practical considerations where members receive contributions to one part of their hybrid fund but not the other. It is reasonably common in hybrid funds that active defined benefit members also have an associated accumulation account but not receive regular employer contributions. For example, UniSuper members may exercise "contribution flexibility" and consequently have no employer contributions paid into their associated accumulation accounts (although one exists for one-off contributions, voluntary salary sacrifice and rollovers etc - we have roughly 17,000 active defined benefit members in this situation). We submit that the Exposure Draft should make clear what happens in these situations. For example, will a hybrid fund be required to report "no" contributions to the accumulation "product" within 42 days but then report the defined benefit contributions to members within six-months? We are concerned that this is potentially very confusing for members. Owing to the complexities associated with hybrid funds, and for consistency across elements of the Stronger Super package, we submit that the defined benefit exemption should be broadened to all defined benefit members, including their accumulation accounts. After all, existing reporting obligations provide for effective disclosure of contributions and this additional obligation could create confusion for many members.

This would still mean that all accumulation-only members receive notification of receipt of employer contributions within 42 days at the end of the reporting, while defined benefit members will receive reporting within the established legislative timeframe for their defined benefit interest and any associated accumulation account. We submit that unless we make use of the concept of 'defined benefit member' rather than 'defined benefit interest', this measure is likely to mean that many members will receive two statements where previously they have received one combined statement showing contributions to both their defined benefit component as well as their accumulation component.

We also wish to highlight some of the practical issues with the exceedingly tight timeframe of 42 days from the end of a reporting period. Currently, very few funds would be in a position to meet this obligation. One of the reasons it currently takes longer than 42 days is that many funds spend a great deal of time and effort in ensuring the quality of data first; there is a potential trade-off between speed and quality which we think needs to be recognised. Another practical consideration is that funds which currently provide member statements on a six-monthly basis typically include with those statements other important information, such as member newsletters and educational pieces – for example information about changes to Government policy and legislation, fund performance data from groups like SuperRatings etc, and changes to fund product offerings . This often relies on information and performance data from third-parties. Our concern is that this additional material might not be able to be delivered within 42 days, particularly where third parties are involved. We think it would be a poor outcome for members – and far costlier – to write to members twice, once at
the end of a reporting period confirming contributions within 42 days and then following up with the member newsletter.

Our concern about cost also extends to the requirement to send statements by post as proposed by section 1017CA(6). This seems at odds with moves towards electronic communication; for example, in RG 221 paragraph 15 ASIC states that:

*We believe that, under the Corporations Act, most financial services disclosures can be delivered online using a variety of delivery methods, including via the delivery methods outlined below. We strongly encourage providers to take into consideration our good practice guidance when delivering disclosures online…*

The methods ASIC refers to specifically include email and hyperlinks. We submit that with member consent, communication via electronic means should be permissible.

We also see a practical issue with the proposed section 1017CA(11) which will require a fund to send an amended statement to a member by post within 14 days of becoming aware that information in the original statement "is incorrect or does not contain the information required by this section". We submit that 14 days is very tight – particularly given there is no materiality concept here. In contrast, where a fund discovers a change or an omission in information reported to the ATO in a Member Contributions Statement, funds are required to notify the ATO within 30 days of becoming aware of the change or omission and that requirement applies only where the change or omission is material (Taxation Administration Act 1953, Schedule 1, section 390-115).

**Conclusion**

UniSuper appreciates the opportunity to comment on the Exposure Draft and asks that you give consideration to the issues we have raised. If you require more information, we are more than happy to meet with you or you can speak to Benedict Davies who manages our policy submissions.

Yours faithfully,

Terry C. McCredden
Chief Executive Officer