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Dear Sir,

**SUBMISSION: TRANSPARENCY AND IMPROVED COMPETITION IN SUPERANNUATION—
FOCUS QUESTIONS**

Part 1: A Better Approach to Regulation

1. The Government has committed to identifying (in dollar terms) measures that offset the cost imposed to business of any new regulation. What suggestions do you have for how the regulatory compliance burden can be reduced?

Answer: I fail to see why entities offering superannuation services should not be treated as anything other than your standard corporations. My submission to the Productivity Commission's *Modern Awards Inquiry*¹ makes clear my dissatisfaction with superannuation both as a product and on a conceptual basis.²

While appreciating that such funds have unique prudential responsibilities, it is not acceptable that individual members should have to settle to be "represented" by unions or other alleged employee representatives (where this applies). Where individuals are contributing a portion of their income,³ this should be analogous to a shareholding; to which attaches voting rights. I cannot abide being told I am at once a "member" of a superannuation fund when my membership is largely that of a "nominal stakeholder". I have no ability to control the identity of the stewards of my money will be; or more precisely, who will often lose my money on my behalf and, then take a management fee for the privilege.

At least if members were also shareholders, then accountability and transparency comes through an ability to vote out directors and, reject the remuneration report, should enough shareholders/members be dissatisfied.

Part 2: Better Governance

1. What should 'independent' mean for superannuation fund trustees and directors?

2. What is the most appropriate definition of independence for directors in the context of superannuation boards?

Proportion and role of independent directors

3. What is an appropriate proportion of independent directors for superannuation boards?

¹ See generally, http://www.pc.gov.au/data/assets/pdf_file/0009/116685/sub054-default-super.pdf as at 26 January 2014

² Also see my submission to the *Super System Review* at http://www.supersystemreview.gov.au/content/submissions/downloads/adam_johnston_091224.pdf as at 26 January 2014. Some of the issues it raised will be repeated here.

³ It should not be forgotten that this is mandatory.

4. Both the ASX Principles for listed companies and APRA's requirements for banking and insurance entities either suggest or require an independent chair. Should superannuation trustee boards have independent chairs?

Process for appointing directors on superannuation trustee boards

5. Given the way that directors are currently appointed varies across funds, does it matter how independent directors are appointed?

6. Should the process adopted for appointing independent directors be aligned for all board appointments?

Answer: In part, see my answer to Part 1. In my own limited experience of boards and board membership, independence can be very much in the eye of the beholder. Much also relies of the Chair and their style of management. In my view, independent Chairs and limited terms should be encouraged, if not mandated, across all Australian firms (superannuation firms included). Understanding, the Government's general preference across many areas for self-regulation ahead of formal regulation, encouraging superannuation firms to publicise to their members what amendments they have made to the Replaceable Rules (or their own Articles) to facilitate these things, should be selling points which make people prefer one fund over another.

Similar standards should apply to the Executive,⁴ as well as the Board. From considering my own superannuation fund and its continued inability to establish a direct debit contribution scheme, to the similarly complacent and predictable methods of many charities, I see much bland managerialism in the corporate world. Regrettably, despite this, as I told the Productivity Commission, superannuation has made all Australians market speculators, in the hands of the bland managers.⁵

Management of conflicts of interest

7. Are there any other measures that would strengthen the conflict of interest regime?

Ongoing effectiveness of superannuation trustee boards

8. In relation to board renewal, should there be maximum appointment terms for directors?

If so, what length of term is appropriate?

⁴ For example, in a submission to the Commonwealth Treasury's *Review of the NFP Sector*, I wrote:

"...And, as (Vern) Hughes went on, it was hard not to agree with his view that the third sector is now dominated by "bland managerialism." There is no question in my mind that larger charities are professional operations designed primarily to encourage the government, corporate leaders and the public to give grants, or make donations and, to continue these relations in perpetuity. In this context, the golf days and galas which Charity Navigator identifies as inefficient become critical, as the charity and corporate managers strengthen and reaffirm networking ties, be this informally on the golf course or at dinner. During the meal, each will shower the other with effusive praise for their selfless work or generous giving, respectively. No doubt all those involved in the activity will feel that it is all very right and proper.

However allegedly virtuous though, it is a "business" whose trade is image, relationships and events which should be treated as the output of any other corporate entity. This means payment of corporate taxes and accountability to shareholders. To achieve such reforms, the Government must be prepared to "pierce the charitable veil," embroidered as it is with heartfelt images and good intentions. Then, you must look honestly at the marketing, event management, consultancy and government contracting that is charity in Australia today and ask why it isn't just another business? If anything, it is not a new regulator the sector needs, but a stringent "show cause" test. Not-for-profits should be required to periodically justify continued receipt of concessions and be able to place on the public record evidence that their dominant purpose remains charitable..."

<http://www.treasury.gov.au/~media/Treasury/Consultations%20and%20Reviews/2011/Review%20of%20not-for-profit%20governance%20arrangements/Submissions/PDF/Johnston%20Adam.ashx> as at 27 January 2014

⁵ Refer to footnote 1

9. Should directors on boards be subject to regular appraisals of their performance?

Implementation issues

10. Would legislation, an APRA prudential standard, industry self-regulation or a combination be most suitable for implementing changes to governance? What would the regulatory cost and compliance impacts of each option be?

11. What is the appropriate timeframe to implement the Government's governance policy under each option?

12. Given that there will be existing directors appointed under a variety of terms and conditions, what type of transitional rules are required?

Answer: Refer to my previous answer. It is appropriate that a register be held, but also that it be readily and easily accessible to interested parties. I would also like to see this detail published as part of the Annual Report. Too often, superannuation funds will send you an annual "booklet" with some facts and figures, but with an emphasis on glossy pictures.

This has never struck me as particularly informative. Nor does it tell you much about individual Director's performance, beyond perhaps their attendance at meetings. Another missing element is the performance of senior executive staff. They should just be as readily scrutinised on specific, measureable growth; particularly when it comes to delivering real growth to members. A failure to deliver *real* and not simply numerical growth should be grounds for dismissal of both Directors and Executive staff.

Such stringencies would make superannuation funds work harder. As I told the Productivity Commission, a mandatory contribution scheme dulls competition and, makes market players behave differently than they would in a voluntary entry environment.

Part 3: Enhanced transparency—choice product dashboard and portfolio holdings disclosure

Part 3A. Choice product dashboard

13. Should a choice product dashboard present the same information, in the same format, as a MySuper product dashboard? In answering this question you may wish to consider, if the choice product dashboard is to present different information, what should it include and why?

Net investment return versus net return

14. Is it appropriate to use a single benchmark (CPI plus percentage return) for all choice product return targets?

15. Should both net investment return (investment return net of investment costs only) and net return (investment return net of all associated costs) be used to measure a product's investment return on the choice product dashboard? In considering this question, you may wish to consider:

- **If including an additional measure for a product's investment return would add unnecessary complexity.**
- **If both net investment return and net return are used on the choice product dashboard, whether they should also be used on the MySuper product dashboard.**
- **Whether it is appropriate to use a single time horizon, for example 10 years, when calculating target net return and net return for the range of possible choice products.**

Answer: Personally, I want all of this information provided, largely because of my low level of faith in the superannuation system as it stands. Furthermore, it does not seem realistic or valuable to have a 10 year forecast. My understanding is that the Federal Treasury's Budget Estimates have an outlook of 4 years and, any survey of public and market commentary shows these are often heavily revised.

If some is to be provided on the superannuation provider's webpage, it should be at an easily accessible point on the front-page/homepage.

Measuring a product's investment risk

16. Should the choice product dashboard include both a short-term (volatility) and long-term (inflation) risk measure? In considering this question, you may wish to consider:

- Is the SRM model the best measure of short-term investment risk?
- What would be the most suitable measure of long-term risk to include on the product dashboard?
- Is it possible to present a long-term risk measure in a similar format to the short-term risk measure (that is High/Medium/Low)?
- Would including an additional risk measure add unnecessary complexity to the product dashboard?

Answer: While some measurement of risk is important, the longer the outlook the less accurate and reliable the measure. In my view, many estimates are more “guess-timates.” They can be underlined by a series of assumptions, which may or may not come to fruition. As for the SRM, this Discussion Paper is the first time I have heard of it. While it may be useful, it concerns me that if all funds use a standard template, elements of the “herd mentality” may take effect. That is: a lot of individuals, advisors and companies making the same investment decisions based on the SRM. In success there will be a positive multiplier; with a failed investment call there will be a contraction, which will also be multiplied.

Additional carve outs

17. Are additional carve outs from the choice product dashboard obligations required? If so, why are these additional carve outs required? In considering this question, you may also wish to consider identifying where the gaps in the current carve out provisions are:

A liquidity measure

18. Should a measure of liquidity be included on the choice and/or MySuper product dashboard? If so, what would a suitable measure be?

Answer: The Discussion Paper indicates that the Cooper Review recommended this reform⁶ and, I fail to see why it has not been acted upon.

Implementation issues

19. Should the commencement date for the choice product dashboard be delayed beyond 1 July 2014? If so, what date would be suitable for its commencement? What would be the benefits and costs to such a delay?

Answer: As a member, I do not see any benefit in such a delay. One is particularly drawn to this paragraph:

“...Including a liquidity measure in the product dashboard would provide members with an indication of how quickly they would be able to move their money out of a fund. There is already a requirement for trustees to meet portability requirements within 30 days. A liquidity measure may invite active members to become more risk averse if products that invest in illiquid assets are rated as higher risk. *A liquidity measure may also discourage trustees from investing in illiquid assets such as infrastructure...*” (emphasis added)⁷

I would be reluctant to see my money going to government infrastructure. As a NSW resident, a litany of toll roads motorists deliberately avoid, tunnels going “under” in more ways than one and, various corporations demanding the taxpayer bail them out of such

⁶ See *Discussion Paper* p.20

⁷ *Ibid*

projects, says much about government planning and contracting. What it says is not complimentary and, does not present government as a good risk.⁸

Part 3B. Portfolio holdings disclosure

Presentation of portfolio holdings

20. Which model of portfolio holdings disclosure would best achieve an appropriate balance between improved transparency and compliance costs? In considering this question, you may wish to consider the various options discussed above:

- **Should portfolio holdings disclosure be consistent with the current legislative requirements (that is, full look through to the final asset, including investments held by collective investment vehicles)?**
- **Should the managers/responsible entities of collective investment vehicles be required to disclose their assets separately? To give effect to this requirement, legislation would require all collective investment vehicles to disclose their asset holdings, regardless of whether some of its units are held by a superannuation fund.**
- **Should portfolio holdings disclosure be limited to the information required to be provided to APRA under Reporting Standard SRS 532.0 Investment Exposure Concentrations?**

21. What would be the compliance costs associated with each of these models for portfolio holdings disclosure?

22. Should portfolio holdings information be presented on an entity level or at a product (investment option) level?

Materiality threshold

23. Is a materiality threshold an appropriate feature of portfolio holdings disclosure?

24. What is the impact of a materiality threshold on systemic transparency in superannuation fund asset allocation?

25. What would be the most appropriate way to implement a materiality threshold?

Answer: I think disclosure should occur without a threshold; practically every working Australian has something invested in superannuation. Therefore, it is not in the public interest, in my view, to use a concept like "commercial in confidence" as a reason for non-disclosure. In any event, "commercial in confidence" is rather a dubious concept. This is because superannuation is a publicly mandated form of saving (or taxation, depending on your perspective) and, as such there is a matter of the public interest to be resolved. This is not a matter of private individuals agreeing to exercise their right to contract in secret.⁹

Implementation issues

26. Should the commencement date for portfolio holdings disclosure be delayed beyond 1 July 2014? If so, what date would be suitable for its commencement? What would be the benefits and costs to such a delay?

Part 4: Improved competition in the default superannuation market

⁸ And something similar has been said by former NSW Auditor General Tony Harris: "Auditors-General: Policies and Politics," Papers on Parliament No. 36, June 2001,

http://www.aph.gov.au/About_Parliament/Senate/Research_and_Education/pops/~/link.aspx?id=CDEC541690F84FCA8FE8CE06383E3CFF&z=z as at 28 January 2014

⁹ See for example, *The Use of Commercial-in-Confidence material and In Camera Evidence in Committees* - Report No. 7 - Standing Committee on Administration and Procedure, August 2001, Legislative Assembly for the Australian Capital Territory

http://www.parliament.act.gov.au/_data/assets/pdf_file/0010/376318/A07incameraandcommercialinconfidence.pdf as at 27 January 2014. This report provides a useful discussion of the difficulties presented to expectations of public accountability by commercial in confidence clauses in contracts

27. Does the existing model (which commences on 1 January 2014) meet the objectives for a fully transparent and contestable default superannuation fund system for awards, with a minimum of red tape?

28. If not, is the model presented by the Productivity Commission the most appropriate one for governing the selection and ongoing assessment of default superannuation funds in modern awards or should MySuper authorisation alone be sufficient?

29. If the Productivity Commission's model is appropriate, which organisation is best placed to assess superannuation funds using a 'quality filter'? For example, should this be done by an expert panel in the Fair Work Commission or is there another more suitable process?

30. Would a model where modern awards allow employers to choose to make contributions to any fund offering a MySuper product, but an advisory list of high quality funds is also published to assist them in their choice, improve competition in the default superannuation market while still helping employers to make a choice? In this model, the advisory list of high quality funds could be chosen by the same organisation referred to in focus question 29.

31. If changes are made to the selection and assessment of default superannuation funds in modern awards, how should corporate funds be treated?

Answer: I would be surprised and concerned if many of the so called "quality filters" mentioned in the Discussion Paper¹⁰ were not already present in the superannuation system. However, I am equally concerned about the central place of the Fair Work Commission in this process.

The industrial relations reforms that heralded the establishment of the Commission (then Fair Work Australia) saw the re-emergence of a centralised "industrial relations club". As someone who is currently unemployed, I do not see this "club" as serving either my or the wider public interest.

Superannuation should be dealt with by a separate organisation. Equally, so long as reasonable prudential standards are met, I do not see any reason to limit the number of entrants in the superannuation market – therefore avoiding the establishment of another exclusive "club."

Yours truly,



Adam Johnston

28 January 2014

¹⁰ See *Discussion Paper*, pp. 27-28