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30 September 2021

The Registrar
Fair Work Commission
11 Exhibition Street
Melbourne VIC 3000

By Email

Dear Registrar

Proposed Variation of the Hospitality Industry (General) Award 2020

We act for AustralianSuper Pty Ltd (**AustralianSuper**).

We are instructed to write to the Commission:

- to inform the Commission of the forthcoming merger of Club Plus Superannuation Scheme (**Club Plus Super**) and AustralianSuper, which will be effected by the transfer of all members and assets of Club Plus to AustralianSuper and which is expected to occur on 1 December 2021;
- to inform the Commission that, upon completion of that merger, Club Plus Super as presently referred to in clause 27.4(d) of the *Hospitality Industry (General) Award 2020* (the **HIGA**) will no longer operate; and
- to propose that the Commission exercise its power under section 160(2)(a) of the *Fair Work Act 2009* (Cth) (the **Act**) to vary the HIGA to remove ambiguity or uncertainty arising from the merger, consistent with the approach that the Commission has taken in similar cases previously.

We set out below background information for the benefit of the Commission and the course of action that we respectfully propose the Commission should take in this matter.

1 Background

Earlier this year, the trustees of AustralianSuper and Club Plus Super executed a Memorandum of Understanding, which contemplated a merger of the two funds. A copy of the relevant public announcement from AustralianSuper appears in the schedule to this letter.

The trustees of AustralianSuper and Club Plus Super have completed the due diligence period referred to in that announcement. The trustees soon expect to execute a deed to effect a merger of Club Plus Super into AustralianSuper, by means of a successor fund transfer as permitted under regulation 6.29 of the *Superannuation Industry (Supervision) Regulations 1994* (Cth).

Presently, Club Plus Super is listed as a default superannuation fund in clause 27.4 of the HIGA but AustralianSuper is not.

From the date on which the merger takes effect (the **Effective Date**), employers that presently make contributions into the Club Plus Super fund pursuant to clause 27.4 of the HIGA will, as a technical

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matter, need to make those contributions into the successor of Club Plus Super (being the AustralianSuper fund) or one of the other funds listed in clause 27.4

It is anticipated that the Effective Date will be 1 December 2021 (but this date may be subject to change).

2 Proposed Course of Action

2.1 Proposed exercise of the Commission's power

We acknowledge that the chapeau to clause 24.7 of the HIGA refers to the possibility of a 'successor' fund qualifying as a default fund. However, we respectfully submit that, nonetheless, the merger that is to occur will generate sufficient ambiguity or uncertainty as to justify an exercise of the Commission's power under section 160(2)(a) of the Act to vary the HIGA on its own initiative.

To assist the Commission in considering this proposal, we draw the Commission's attention to the following previous decisions:

- *Re Clerks—Private Sector Award 2010* [2013] FWC 5321 (PR539726);
- *Re Catholic Super (CSF Pty Ltd)* [2013] FWC 482 (PR533376);
- *Re NGS Super Pty Ltd* [2012] FWA 10602 (PR532443); and
- *Re CARE Super Pty Ltd* [2012] FWA 8822 (PR530210).

In each of these matters, the Commission exercised its power under section 160(2)(a) of the Act to vary certain Modern Awards to remove ambiguity or uncertainty arising from fund mergers and fund name changes. Also in each case, the Commission exercised that power following correspondence from relevant superannuation funds.

Our respectful submission is that in this case the Commission should exercise its powers in the same way.

2.2 Proposed terms for a determination

Consistent with the Commission's approach in previous similar cases, we respectfully propose that the terms of the Commission's determination should be to effect that the words 'Club Plus Superannuation Pty Ltd' appearing in clause 24.7 of the HIGA be deleted and replaced with the words 'AustralianSuper' (which is the name of the AustralianSuper fund).

2.3 Date of effect

As we have explained above, it is anticipated that the Effective Date will 1 December 2021.

We propose that the date of effect of the proposed determination (if the Commission agrees to make it) should be the first full pay period commencing on or after 1 December 2021.

2.4 Other Modern Awards

Through our searches of the current Modern Awards, we have identified that Club Plus Super is also a default superannuation fund listed in clause 21.4 of the *Registered and Licensed Clubs Award 2020*. However, we do not believe a variation of that Modern Award is necessary because AustralianSuper is already listed as a default fund in that Modern Award.

We would be grateful if you would bring this letter to the attention of an appropriate member of the Commission.

We would be pleased to provide any further material or submissions to the Commission if that would assist the Commission to consider this proposed variation.

We have copied a representative of Club Plus Super on this letter.

Yours faithfully



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Schedule 1: Public announcement regarding forthcoming merger

MEDIA RELEASE 13 May 2021

Club Plus Super and AustralianSuper sign MOU

Club Plus Super and AustralianSuper have signed a Memorandum of Understanding ahead of a period of due diligence as the two parties work towards a potential merger.

Following a rigorous process, the Club Plus Super board identified AustralianSuper as having strategic, cultural and operational alignment to continue to provide the best financial outcomes for members into the future.

Club Plus Super Chief Executive Stefan Strano said exploring the benefits of a merger was in the best interests of the fund's members.

"Our declared purpose is to 'support and enhance the journey of our members to retire on their own terms.' While most of our members join us at the start of their working lives, we recognise they need support across all stages of life, through careers that may span multiple industries," Mr Strano said.

"We have been very impressed through this process with the steadfast member-first culture of AustralianSuper."

AustralianSuper welcomes the recent decision by the Club Plus Super board to reach out and begin merger discussions.

AustralianSuper Chief Executive Ian Silk said the initial discussions between the two parties showed an alignment of values and is hopeful this can lead to a positive outcome for members of both funds.

"Members of the two funds have many similarities coming from a wide range of workplaces and being focussed on the delivery of strong long-term performance," Mr Silk said.

"This is a great opportunity for our two funds to get to know each other better as we work through the due diligence period."

The regulators have been briefed about the MOU.

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About Club Plus Super

Club Plus Super was established in 1987 and today manages more than \$3bn for approximately 60,000 people. With a heritage in hospitality and community clubs, Club Plus Super's history is one of serving people who serve others. While our members span many different industries today this history has instilled in our values a priority on striving to provide the highest standard of service and we respect the vital role local communities play in our members' lives. Club Plus Super has delivered an average of 8.6%p.a. for its members over the past five years¹ and has held the highest rating of 'Platinum' with SuperRatings.

About AustralianSuper

AustralianSuper manages more than \$200 billion of members' retirement savings on behalf of more than 2.4 million members from around 344,000 businesses as at 30 December 2020. One in 10 working Australians is a member of AustralianSuper, the nation's largest superannuation fund. The Fund is a top performing fund delivering annual member returns of 9.06%% a year over the past 10 years ranking it number 1 in Australia.*

*AustralianSuper Balanced investment option compared to the SuperRatings Fund Crediting Rate Survey - SR50 Balanced (60-76) Index to 31 March 2021. Investment returns are not guaranteed. Past performance is not a reliable indicator of future returns.

This information may be general financial advice which does not take into account your personal objectives, situation or needs. Before making a decision about AustralianSuper, consider your financial requirements and refer to the relevant Product Disclosure Statement (PDS) available at australiansuper.com/pds. Investment returns are not guaranteed. Past performance is not a reliable indicator of future returns. AustralianSuper Pty Ltd ABN 94 006 457 987, AFSL 233788, Trustee of AustralianSuper ABN 65 714 39498.

¹ Super Ratings Fundamental Reports at 31 March 2021