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File Name: 2011/47

18 October 2011

Manager
Superannuation Unit
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600

Email: strongersuper@treasury.gov.au

Dear Sir \ Madam,

EXPOSURE DRAFT – SUPERANNUATION LEGISLATION AMENDMENT (MYSUPER CORE PROVISIONS) BILL 2011

The Association of Superannuation Funds of Australia (ASFA) would like to provide this submission in relation to the Exposure Draft – *Superannuation Legislation Amendment (MySuper Core Provisions) Bill 2011* ("Bill").

About ASFA

ASFA is a non-profit, non-political national organisation whose mission is to protect, promote and advance the interests of Australia's superannuation funds, their trustees and their members. We focus on the issues that affect the entire superannuation industry. Our membership, which includes corporate, public sector, industry and retail superannuation funds, plus self-managed superannuation funds and small APRA funds through its service provider membership, represent over 90% of the 12 million Australians with superannuation.

Comments of the Exposure Draft of the Bill

We have some comments on the timing of the implementation, which we have addressed in this letter, and on some technical aspects and drafting issues with the Exposure Draft, which we have enclosed in an annexure.

1) **Need for longer transitional period**

While ASFA supports both the Stronger Super and the Future of Financial Advice ("FOFA") reforms, it is important to note that compliance with both of these reforms will necessitate considerable changes being made to a mature and complex superannuation system.

For trustees to be in a position to be able to make the threshold decision as to whether or not to offer a MySuper product necessitates a degree of certainly as to the regulatory requirements going forward. Following the threshold decision there is then a variety of strategic and tactical decisions which need to be made.

Implementation of the legislative requirements will involve the identification of, and agreement upon the approach to, considerable and extensive alterations to IT systems; processes and procedures and fund documentation such as governing rules and product disclosure statements. Business requirement documents, let alone functional and technical specifications, cannot be agreed upon and signed off, nor most work commenced, until such time as there is a high degree of legislative certainty.

Change management on this kind of scale and degree of interrelatedness is not only expensive but, more importantly, making significant alterations to member databases and IT systems poses considerable risks of lost or corrupted data, resulting in inaccurate or incomplete member records. The most effective means by which such a risk is mitigated is by utilising robust project management methodologies to determine timelines; identify interdependencies; produce a staged project plan; include sufficient time for regression and user acceptance testing, and then execute in accordance with the plan.

All of this takes time. There are often capacity constraints, interdependencies and unintended consequences, especially when it comes to coding and testing system changes. Rushing to meet deadlines materially increases the risks to a project.

Any delays in, or changes to, any aspect of either the Stronger Super or FOFA legislation will significantly impact on trustees' abilities to implement the required changes in an orderly and appropriately risk-managed fashion.

It appears as though all of the Bills incorporating the provisions detailing the MySuper requirements will not have been released as exposure drafts, let alone introduced into Parliament and passed into law, until early to mid 2012. Similarly, APRA will not be releasing draft prudential standards until early to mid 2012, which will not be finalised until mid to late 2012.

The Government's response to the Super System Review - Stronger Super – stated that *"[f]ollowing an appropriate transitional period, MySuper products will be the only products eligible to accept contributions from employers on behalf of employees who do not choose a fund*".

We submit that – in order to mitigate the risks outline above – the three months from 1 July 2013 to 1 October 2013 is not a sufficient transitional period. While funds should be able to offer MySuper products from 1 July 2013, the period from which default contributions must be made to a MySuper product should not commence until 1 July 2014.

2) Impact of absence of CGT roll-over relief

The absence of Capital Gains Tax ("CGT") roll-over relief may necessitate many trustees - who may otherwise have considered entering into a successor fund transfer arrangement - instead to expend considerable time and resources creating a MySuper product which would otherwise not have been created.

The absence of CGT roll-over relief creates a significant barrier to fund mergers.

In determining whether to merge with another fund, trustees of superannuation funds are under a trust law duty required to act in the best interests of members. Accordingly, any threshold decision as to whether or not to merge, as well as the decisions as to the other fund and the timing, are all made taking into consideration the various benefits and costs to members of the proposed merger.

The impact of the CGT tax represents a significant consideration when determining the costs of a proposed merger and may well be a determining factor as to whether or not a merger proceeds.

Some funds currently are carrying deferred tax assets equivalent to 1.5% or more of member account balances, which given the volatility of the market may well increase, that would be lost if a merger were to go ahead without CGT relief. For a member with an average account balance of approximately $70,000 this could represent a reduction in the value of their superannuation account of approximately $1,050.

Accordingly, the absence of CGT roll-over relief may cause the costs to members, through the extinguishment of deferred tax assets, to outweigh the benefits of any proposed merger.

It is important to note in this context that there is a distinction between circumstances where both the legal and beneficial ownership of an assets changes (which can be considered to be a “true” CGT event) and where only the legal ownership is transferred to another, leaving the beneficial ownership unchanged (which can be considered a “notional” CGT event).

From the outset the CGT tax has allowed rollover relief in circumstances where asset ownership changes were associated with specified types of business reorganisations, where no change occurred in the underlying ownership of the asset concerned or where the underlying assets against which the taxpayers had a claim did not change.

Permitting the roll-over of CGT gains\losses on successor fund transfers - where only the legal, and not beneficial, ownership of the assets has changed - is entirely consistent with the business reorganisation rule.

3) Amendment of Trust Deeds

We also ask that, in lieu of extensive amendments to governing rules, that consideration be given to the Bill deeming the relevant provisions to be included in trust deeds in a fashion similar to that employed with respect to sub-section 52(1) of the SIS Act.

4) Branding

It is unclear why – in order for there to be two MySuper products offered in the same fund - the benefits of members and beneficiaries must be transferred in from another regulated superannuation fund and cannot, for example, be in a sub-plan of the same superannuation fund.

There are funds which have a number of different sub-plans. They exist because of the economies of scale which can be achieved by sub-plans coming together in a master trust arrangement. These economies of scale will be lost if the trustee is forced to create different funds for each of the sub-plans.

In addition, a trustee should be able to “white label” a MySuper product for different groups. Each “white label” product would have identical fees and benefits, however, the name and the “look and feel” would be able to be tailored for the different groups. This could be as little as producing PDSs and member statements incorporating different logos, colours and \ or themes.

It is unclear as to what is meant by "material goodwill". We take it that the material goodwill is in the intellectual property rights in a particular brand and the inherent commercial value to the trustee as a consequence of the awareness of that brand?

It is of concern that APRA must also be satisfied as to the existence and maintenance of material goodwill and best interests of members. APRA is a prudential regulator. It should not be making such legal and commercial assessments. This is the duty of the trustee as fiduciary.

5) Large Employer-Sponsors

It is unclear as to why an arbitrary number of members has been chosen, as opposed to an employer's willingness to pay any incremental costs involved in running an employer-sub-plan. Utilising an arbitrary threshold number measure always creates issues with respect to the need for transitional provisions should the number fall below the threshold. If a numerical measure is to be employed we suggest that the measure should be that 500 members of the fund are employees, former employees, or relatives and dependants of employees and former employees of the employer - sponsor and its associates.

Furthermore it is unclear why – unlike the current exception to having to become a "public offer" fund within SIS – former employees, and their relatives and dependants, are not able to remain a member of the large employer sponsor product. Compelling former employees, and their relatives and dependants, to leave the employer product effectively mandates the practice of "flipping". While employers should be free to decide that former employees, and their relatives and dependants, are not eligible to remain as members of the employer product, this is not to say that the employer should not have the ability to choose to have them remain as members.

With respect to the requirement that "any" employee may become a member - there may be instances where, owing to the industrial relations circumstances of the employer, it may not be possible for this to be the case.

Finally, it is unclear whether the trustee must make a separate application with respect to each large employer-sponsor MySuper product or can simply make one application with respect to being able to offer one or more large employer-sponsored MySuper products. If it is the former it is unclear as to why this should be the case, given that the only additional criteria are relatively narrow and capable of being determined "objectively" as a question of fact. To compel the trustee to make a series of separate applications to APRA would prove an extremely inefficient process, consuming considerable resources and creating significant delays for little or no benefit. As a prudential regulator APRA has the power to assess large employer products as part of their regular reviews of funds.

6) Lifecycle investment option

We query why a lifecycle investment exception can only be on the basis of age.

ASFA suggests that, in addition to an age based criteria, funds should be able to add on other determinants of investment cohort construction. This will enable the development of a broader and more innovative range of properly structured and appropriate investment strategies. Given that MySuper requires a single, diversified investment strategy, trustees must be free to utilise a lifecycle approach to set a strategy which enables them to manage the extent of investment risk which different members are bearing.

Accordingly it is possible that a trustee may want to develop a "lifecycle approach" which, in addition to the members' age, takes into account other objective criteria, such as the account balance and \ or the quantum of contributions, as the parameters which they feel appropriately define a particular cohort's risk tolerance. Importantly, once these cohorts are defined, all members within the same cohort of age and other similar characteristics will have the same asset allocation and receive comparable investment returns on that basis.

7) Pension

Given the attempt to move from the short-termism of focussing on the accumulation phase to a "whole of life" approach, it is disappointing that a MySuper product is prohibited from paying a pension. While we appreciate there may have been insufficient time to develop rules around MySuper pensions, we recommend this be undertaken as a matter of urgency.

8) Prescriptive nature of drafting

Some of the drafting of the Bill - rather than being principles based – is too prescriptive and detailed. This can drive behaviour around avoiding the legislative intent and produce adverse outcomes, especially with respect to fees.

We are also concerned that the draft legislation contains a level of detail that will create an environment where inadvertent compliance breaches increase dramatically.

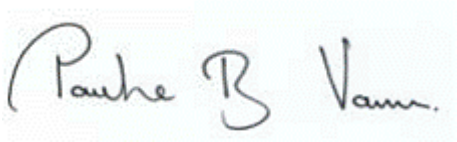
Another concern is that the draft Bill has introduced definitions which do not reflect current or future practices. The definition of "investment fees" in particular has ignored the importance of global standards which have been developed, such as the Global Investment Performance Standards, the ongoing development of outcomes reporting standards and the existence of industry standards.

Adopting a prescriptive approach to drafting means the Bill cannot reflect the different products offered and the variety of decisions trustees make and there is a significant risk that it will stifle innovation.

We submit that the drafting of the Bill should be principles based and not prescriptive in its approach.

If you have any queries or comments regarding the contents of our submission, please contact me on (02) 8079 0805 or 0433 169 342 or by email pvamos@superannuation.asn.au.

Yours sincerely



Pauline Vamos
Chief Executive Officer

ANNEXURE

EXPOSURE DRAFT – SUPERANNUATION LEGISLATION AMENDMENT (MYSUPER CORE PROVISIONS) BILL 2011

A) TECHNICAL ASPECTS

1) 29WA - Contributions in relation to which no election is made to be paid into MySuper

ASFA is concerned with a breach of section 29WA being a strict liability offence.

Section 29WA creates a strict liability offence with respect to the following: -

> *"(1) This section applies if:*
> *(a) a person is a member of a regulated superannuation fund; and*
> *(b) a contribution to the fund is made for the benefit of the person; and*
> *(c) either:*
> *(i) the person has not given the trustee, or the trustees, of the fund* ***an election in writing that the contribution is to be paid*** *into a* ***specified choice product, or choice products****; or*
> *(ii) the person has given the trustee, or the trustees, of the fund* ***an election in writing to have some of the contribution paid into a specified choice product****,* ***or choice products****, but no such election has been made in relation to the remainder of the contribution" (emphasis added).*

ASFA submits that the legislation be should provide that a valid election may be made either before or after the commencement of the MySuper provisions. ASFA considers it essential that funds be able to rely on existing instructions from members to determine that future contributions are to be placed in a choice product.

Further, it should be noted that not all elections to invest in a "choice product", through participating in member investment choice, are made in writing, as some funds allow member to effect member investment choice over the 'phone. ASFA also considers it appropriate that superannuation funds be able to receive, and members make, an election other than in writing.

Because of the complexities of administration systems ASFA submits that the requirement should be that "the trustee has processes in place to ensure that" such contributions are paid into a MySuper product.

Proposed new paragraph 29WA(1)(c) makes reference to "*an election in writing that …* ***the contribution*** (i.e. the specific contribution – singular) *is to be paid into a specified choice product"* (emphasis added).

ASFA submits that, as a minimum, this should be amended to make it clear that such an election covers "any" contributions in the future, however, this would still be onerous even if it were a "one-off" election "going forward", as this would necessitate a significant "back capture" of existing choice members. Ideally a trustee should be able to rely on any past indication from a member as to where contributions are to be allocated.

Accordingly, we submit that the trustee - when they receive a contribution for existing choice member - is able to employ a "decision rule" that it is able to allocate contributions to a choice product in accordance with the previous, standing, instructions from the member – irrespective of how long ago, or in what form, the instructions were received.

This is consistent with the underlying principles behind the SuperStream reforms, the desire to achieve the efficiencies and accuracy delivered by "straight through processing", and with the legal and commercial reality that the member has exercised choice previously - to become a member of a choice product and \ or to participate in member investment choice – and that standing instruction should prevail.

This will necessitate amendments to the Bill, including removing references to members making "*an election in writing that the contribution is to be paid into a specified choice product, or choice products"*. In particular, the Bill should not refer to elections being: -

- in writing – to allow for investment choice instructions over the 'phone;
- with respect to "the contribution" which is to be paid - which confines the "election" to a specific contribution;
- into a "specified choice product or products" – which confines the election to having occurred after the MySuper \ Choice regime has come in. The election should have been able to have been made at any time.

2) <u>29E(6A)(b) – ensure governing rules not contravened</u>

Proposed new paragraph 29E(6A)(b) states that: -

> *"(b) the RSE licensee must ensure that the governing rules of the fund relating to that class of interest are not contravened".*

While trustees endeavour to ensure that the governing rules are not contravened it is a fact of life that inadvertent errors and immaterial breaches do occur. It should be borne in mind that there is increasing concern and unease among trustees and their insurers that their potential liability is being increased significantly. We suggest that this be re-drafted to the effect of "*the RSE licensee must ensure that there are processes in place such that the governing rules of the fund relating to that class of interest are not contravened*".

3) <u>29SB - Period for deciding applications for authority</u>

Proposed new sub-section 29SB states: -

> *"(1) APRA must decide an application by an RSE licensee for authority to offer a class of beneficial interest in a regulated superannuation fund as a MySuper product:*
>
> *(a) within 60 days after receiving the application; or*
>
> *(b) if the applicant was requested to provide information under section 29SA - within 60 days after:*
>
> *(i) receiving from the RSE licensee all of the information the RSE licensee was requested to provide under that section; or*
>
> *(ii) all notices relating to that information being disposed of;*
>
> *unless APRA extends the period for deciding the application under subsection (2)".*

It is not clear why – instead of merely "stopping the clock" – a request to provide information under section 29SA should instead "re-start the clock", especially given that APRA has the discretion to extend the period under sub-section 29S(2) should circumstances warrant it.

4) 29T Authority to offer a MySuper product

Proposed new paragraph 29T(1)(d) provides that APRA must authorise an RSE licensee to offer MySuper product if, and only if: -

> *"(d) the fund has 5 or more members and is not an eligible rollover fund (within the meaning of Part 24)".*

While we appreciate that, as a matter of policy, Self Managed Superannuation Funds ("SMSFs") and Small APRA funds ("SAFs") are to be excluded from offering a MySuper product, this would also appear to preclude a new fund, in start-up phase with no members, from offering a MySuper product as well. We suggest that the legislation be amended such that SMSFs and SAFs are prohibited from offering a MySuper product.

5) 29TA - Product in another fund in which there is already material goodwill

Proposed new section 29TA provides as follows: -

> "*This section is satisfied in relation to a class of beneficial interest in a regulated superannuation fund (the **proposed MySuper product**) if:*
> *(a) the benefits of members and beneficiaries in another regulated superannuation fund (the **original fund**) are to be transferred to the fund; and*
> *(b) APRA is satisfied that:*
> *(i) some or all of the persons whose benefits are to be transferred hold a class of interest in the original fund that is similar to the proposed MySuper product; and*
> *(ii) there is material goodwill in that class of interest in the original fund; and*
> *(iii) that goodwill could not be maintained unless the RSE licensee were authorised to offer the proposed MySuper product as an additional MySuper product in the fund; and*
> *(iv) it would be in the best interests of the members of the fund, and those persons whose benefits are to be transferred to the fund, to maintain the distinction between the proposed MySuper product and other classes of beneficial interest in the fund that the RSE licensee is authorised to offer as a MySuper product".*

It is unclear why the benefits of members and beneficiaries must be in another regulated superannuation fund and cannot, for example, be in a sub-plan of the same superannuation fund.

Similarly it is unclear as to what is meant by "material goodwill". We take it that the material goodwill is in the intellectual property rights in a particular brand and the inherent commercial value to the trustee as a consequence of the awareness of that brand?

It is of concern that – as well as the trustee determining whether or not paragraphs 29TA(b)(i) to 29TA(b)(iv) are satisfied, APRA must also be satisfied that these paragraphs are met.

In ASFA's view APRA - a prudential regulator - should not be making assessments as to similarity of interests; existence and maintenance of material goodwill; and best interests of members. These are matters which are more appropriate for the trustee alone to determine.

6) 29TB - MySuper products for large employer-sponsors

Proposed new paragraph's 29TB(1)(a) provides as follows: -

> *"(1) This section is satisfied in relation to a class of beneficial interest in a regulated superannuation fund if:*
>
> *(a) under the governing rules of the fund, the only persons who may hold an interest of that class in the fund are:*
>
> *(i) employees of one specified employer, or an associate of that employer; or*
>
> *(ii) the relatives or dependants of those employees*"

It is unclear why – unlike the current exception to having to become a "public offer" fund within SIS – former employees, and their relatives and dependants are not able to remain a member of the large employer sponsor product. Many funds have specific rules that permit this.

Compelling former employees, and their relatives and dependants, to leave the employer product, has the effect of effectively mandating the practice of "flipping". While employers should be free to decide that former employees, and their relatives and dependants, are not eligible remain a member of the employer product, this does not mean that the employer should not be allowed to choose to have them remain as members should the employer so decide.

ASFA considers that this should be permitted and suggests that this be expanded to allow, but not require, former employees and their relatives and dependants to remain members of the product.

Proposed new paragraph 29TB(1)(b) states that: -

> *"under the governing rules of the fund, any employee of that employer or associate, or a relative or dependant of any of those employees, may hold an interest of that class in the fund".*

There is no particular reason why there should be a requirement that "any" employee "may" be a member. This is a matter which should be left to the discretion of the employer and the trustee.

Furthermore, there are instances where industrial instruments restrict the ability of an employer to nominate an employer chosen fund in respect of a class of employees. ASFA considers that in this circumstance which is not uncommon for large employers, should not prevent the employer from establishing a MySuper product for any employees not otherwise covered by the industrial agreement.

ASFA considers that paragraph 29TB(1)(b) should be reworded to confirm that the employer retains the discretion as to whether MySuper membership should be extended to relatives of employees and former employees. That is, it should not be a mandatory requirement to extend the membership beyond employees but employers and trustees should be free to do so if they wish.

Proposed new paragraph 29TB(1)(c) necessitates that the employer must be a "large employer-sponsor" in relation to the fund. "Large employer-sponsor" in relation to the fund is defined in proposed new sub-section 29TB(2) as: -

> *"(2) An employer is a **large employer-sponsor** in relation to a regulated superannuation fund if it contributes to the fund or would, apart from a temporary cessation of contributions, contribute to the fund for the benefit of at least 500 members of the fund who are employees of either that employer-sponsor or an associate of that employer-sponsor".*

Utilising an arbitrary threshold number measure, as opposed to a criteria such as the employer's willingness to pay, always creates issues with respect to the need for transitional provisions should the number fall below the threshold. We note that the provision states that "APRA may cancel", as opposed to its being mandatory, but nevertheless we suggest that the provision be amended so that the 500 members are employees test is only "failed" if there are fewer than 500 members as at the end of two consecutive years of income. APRA should then assess whether it is in the best interest of members to cancel the authority or allow it to continue. Please refer to our comments with respect to proposed new section 29U in this context.

Further, we query why the measure "500 members of the fund who are employees"?

We suggest that the measure be either: -

- that the employer, together with all of its associates, employs at least 500 employees; or
- that the 500 members of the fund test be amended to include employees and former employees, and their relatives and dependants, of the employer and its associates.

Furthermore, it is unclear, with respect to large employer-sponsor products, as to whether the trustee must make a separate application with respect to each large employer-sponsor MySuper product or can simply make one application with respect to being able to offer one or more large employer-sponsored MySuper products. ASFA suggests that the legislation be amended to make it clear that a trustee only needs to make one application to offer one or more large employer sponsor products.

Given that the only criteria under sub-section 29TB(1) are relatively "objective" and narrow, namely whether: -

- the only persons who may hold the large employer-sponsored MySuper product are employees, former employees and their dependants and relatives;
- any employees may hold the large employer-sponsored MySuper product (assuming this is not amended); and
- the employer meets the definition of a large employer-sponsor

are all criteria which the trustee can determine objectively, and which can be assessed by APRA on review, an application with respect to each large employer-sponsored product would not appear to be warranted.

In particular, it is unclear as to how the trustees who are responding to a "request for tender" with respect to an existing corporate fund or sub-plan, or a future "large employer-sponsored MySuper product", will need to proceed in future.

Prospective trustees should not be required to: -

- go to the effort and expense of amending their governing rules and making a "hypothetical" application to APRA on the off-chance that their response to tender is successful; or
- wait until the result of the tender response process is communicated to them, before commencing on amending the governing rules and making an application to APRA, which will delay the transfer of the fund \ sub-plan by some weeks, if not months.

7) 29TC(1)(b) - characteristics of a MySuper product – same options, benefits and facilities

Proposed new paragraph 29TC(1)(b) states that within a MySuper product

> *"(b) all members who hold a beneficial interest of that class in the fund are entitled to access the same options, benefits and facilities".*

There may be some – limited – instances of options, benefits or facilities which it may be reasonable to make available only to a sub-set of members, such as educational seminars which are targeted at a particular age group (generally pre-retirees aged 55 or more) or employees at a particular workplace. Education seminars are one of the most effective means of educating members and driving behaviour but it appears as though, without an exception, funds may no longer be able to offer such seminars.

In particular, seminars which are cost-effective delivered to large groups of employees at a single workplace simply cannot be justified, on cost grounds, for delivery to smaller numbers in remote locations.

One possibility may be to allow such seminars provided, for example, the same educational content is available to all members online.

Furthermore, we submit that it may be necessary to clarify that the reference to "benefits" is not taken to include a reference to insurance benefits.

8) 29TC(1)(c) - characteristics of a MySuper product – amounts credited to accounts

Proposed paragraph 29TC(1)(c) states: -

> "*amounts are credited to the accounts of members who hold a beneficial interest of that class in the fund in a way that does not stream income from any assets of the fund that are attributed to the class to the accounts of only some of those members, except to the extent permitted under a lifecycle exception".*

By using the expression "amounts are credited to the accounts" this does not appear to reflect the use of unit pricing as a means of distributing earnings and capital growth on assets to members. ASFA submits that the legislation should be amended to clarify that it is intended to cover unit pricing as well as the use of crediting rates.

Furthermore, as crediting rates can be either positive or negative, the legislation should be amended to include member accounts being debited as well as being credited.

9) 29TC(1)(d) - characteristics of a MySuper product – "fee subsidisation"

Proposed new paragraph 29TC(1)(d) states: -

> *"to the extent that the accounts of members relate to a beneficial interest of that class, the same process is to be adopted in crediting and debiting those accounts, except to the extent that a different process is necessary to allow for* ***fee subsidisation*** *by employers" (emphasis added).*

It is important to note in this context that lower fees may be charge to some members not as a result of fee subsidisation but because – due to efficiencies and economies of scale – the trustee and employer have agreed that a lower administration fee is appropriate. This does not amount to a fee subsidisation.

10) 29TC(1)(e) - characteristics of a MySuper product – fee subsidisation by employers

Proposed new paragraph 29TC(1)(e) states that: -

> *"(e) if fee subsidisation by employers is permitted, that subsidisation does not favour one member who holds a beneficial interest of that class in the fund and is an employee of a subsidising employer over another"*

We query why there cannot be fee differentials between different groups of employees? If this has been determined as part of the employer's industrial relations arrangements, why should MySuper override this?

Currently, there are circumstances where different employees receive different levels of fee subsidy from their employers. ASFA is concerned that the provision, as currently worded, does not cover such circumstances.

This may have come about as a result of grandfathering arrangements (e.g. all employees who were employees of a previous employer \ members of a former fund are provided with a certain level of subsidy whilst new employees receive less, or no, subsidy) or may be dependent upon the category of the employee. Such arrangements may also be included within workplace agreements or individual contracts or may have been a feature of the sub-plan \ category of the fund when the member joined.

Accordingly, it may be appropriate to allow the grandfathering of fee subsidy arrangements which were in place as at the commencement of MySuper.

We suggest that the legislation confirm that employers are able to subsidise the insurance premiums payable and that this would not be considered to fall under this provision.

11) 29TC(1)(f) - characteristics of a MySuper product – no limitations on kinds of contributions

Proposed new paragraph 29TC(1)(f) states: -

> *"(f) no limitations are imposed on the source of contributions made by or on behalf of persons who hold a beneficial interest of that class, other than those imposed by or under the general law or a law of the Commonwealth or of a State or Territory".*

Some standard employer - sponsored, non public - offer, corporate funds, especially current and former defined benefit funds, do not accept contributions from an employer who is not a standard employer sponsor, or associated with the standard employer sponsor. Ideally the legislation should be amended to allow this to continue.

12) 29TC(1)(g) - characteristics of a MySuper product – no limitations on kinds of contributions

Proposed new paragraph 29TC(1)(g) states that, within a MySuper product: -

> *"(g) no limitations are imposed on the kinds of contributions made by or on behalf of persons who hold a beneficial interest of that class, other than those imposed by or under the general law or a law of the Commonwealth or of a State or Territory".*

The legislation seems to contemplate 'kinds of contributions' as meaning a contribution type such as concessional, non concessional, spouse, etc. ASFA considers it necessary that trustees be able to refuse 'in-specie' contributions, such as shares and property, which may interpreted as being a 'kind' of contribution.

Funds should also have the capacity to direct 'how' contributions are made, at least until such time as payment of contributions electronically is mandated.

13) Proposed new paragraph 29TC(1)(e) – fee subsidisation by employers

Proposed new paragraph 29TC(e) states that: -

> *"(e) if fee subsidisation by employers is permitted, that subsidisation does not favour one member who holds a beneficial interest of that class in the fund and is an employee of a subsidising employer over another".*

Currently, there are circumstances where different employees receive different levels of fee subsidy from their employers. This can have come about as a result of grandfathering arrangements (e.g. all employees who were employees of a previous employer \ members of a former fund are provided with a certain level of subsidy whilst new employees receive less, or no, subsidy) or may be dependent upon the category of the employee. A number of these arrangements may be included within workplace agreements or individual contracts or would have been a feature of the sub-plan \ category of the fund when the member joined.

Accordingly, it would be appropriate to allow the grandfathering of fee subsidy arrangements which were in place as at the commencement of MySuper.

14) Proposed new sub-section 29TC(2) – lifecycle investment exception

Proposed new sub-section 29TC(2) states: -

> *"(2) a **lifecycle exception** is a rule under the governing rules of the fund that allows income from different classes of asset of the fund to be streamed to the accounts of different subclasses of the members of the fund who hold a MySuper product on the basis, and only on the basis, of the age of those members".*

It is important to note that a lifecycle option does not "*allow … income from different classes of asset of the fund to be streamed to the accounts of different subclasses of the members of the fund who hold a MySuper product on the basis, and only on the basis, of the age of those members".*

What it does allow – on the basis of one or more criteria, such as the age cohort of members - is for the account balance \ contributions of those members to be invested in different assets to members of other cohorts. Trust law then determines that the income \ growth from particular assets is attributed - on the basis, and only on the basis – of the extent to which those members' accounts are invested in those assets.

Further to this, we query why a lifecycle investment exception can only be on the basis of age. ASFA strongly suggests that the lifecycle exemption should permit the inclusion of objective criteria other than age.

We submit that the legislation should not be drafted to preclude other determinants of investment cohort construction, as this will stifle the development of properly structured and appropriate investment strategies. Given that MySuper requires a single, diversified investment strategy, trustees should be free to utilise a lifecycle approach to set a strategy which enables them to manage the extent of investment risk which different members are bearing.

Investment risk affects different members depending on factors other than age, such as how much money they have accrued and how much is being contributed. Trustees should be free to identify parameters which they feel appropriately reflect a member's risk bearing tolerance to define these cohorts.

Accordingly it is possible that a trustee may want to develop a "lifecycle approach" which takes into account other objective criteria, such as the account balance and \ or the quantum of contributions, as the parameters which they feel appropriately define a particular cohort's risk tolerance.

Importantly, once these cohorts are defined, all members within the same cohort of similar characteristics will have the same asset allocation and receive comparable investment returns on that basis.

It should be borne in mind that management of peer risk can dominate investment thinking, which can lead to inertia in responding to economic, market and behavioural developments affecting members. Australia currently is recognised around the world as one of the worst examples of this.

Setting strategy using a lifecycle approach is a key development which enables trustees to manage the investment risk which falls on members in accumulation funds. Accordingly, trustees should be able to develop investment strategies which mitigate the risk of members being exposed to a single investment risk profile throughout their working life which is not appropriate.

It should be noted that, due to the fact that the assets underlying the various lifecycle investment options will vary, the investment costs and investment returns, whilst the same for a particular cohort, will differ between cohorts.

15) Division 4—Cancelling authority

Proposed new sub-section 29U(1) permits APRA to cancel an authority to offer a MySuper product.

With the limited exception of proposed new section 29UB there is no provision in the Bill for what is to occur in the event a licence is cancelled.

At a minimum, the Bill should prescribe what is to occur with contributions received after the notice of cancellation has been received and the period of time in which the trustee must transfer the members' benefits to another MySuper product.

We note that proposed new paragraph 29U(2)(b) states APRA may cancel an authority if: -

> *"(b) the RSE licensee was authorised to offer that class of beneficial interest in the fund as a MySuper product because section 29TB was satisfied in relation to the class and, on the last day of the immediately preceding year of income, that section was no longer satisfied in relation to the class".*

This means, potentially, that APRA could cancel an authority on 1 July with respect to a 29TB MySuper product where the number of employees who were MySuper members was reduced to 499 only the previous day.

It is unacceptable that an authority be cancelled with immediate effect. Instead the trustees should be permitted a transition period to enable the orderly transfer of members to an alternative MySuper product.

As such, we seek assurance that any withdrawal of an authority will be managed carefully by the regulator to as to produce an orderly transitioning of members to another MySuper product.

16) <u>Proposed new sub-section 29CV(2) – definition of "administration fee"</u>

Proposed new sub-section 29CV(2) defines an administration fee as being "a fee that relates directly to the administration of the fund".

An administration fee should be the means by which the trustee of a MySuper product recoups all of the direct, and indirect, costs of managing, operating and running the product.

It is possible that "*relating directly to the administration of the fund*" could be construed as being confined to recovering those costs associated with such matters as administering the member databases; operating contact centres and processing contributions and benefit payments. Administration fees, however, should also cover all of the fixed and variable, direct and indirect, costs associated with the functions performed in managing and operating the fund, such as the costs of arranging and administering insurance; legal and accounting functions; supervisory levies to regulators; risk and compliance functions; communication and disclosure costs; distribution and marketing functions and providing (permitted) advice.

Accordingly, we suggest that the words: -

- "directly" be deleted;
- "management and operation" be inserted after the word "administration";
- 'MySuper product" be substituted for the word "fund"; and
- "and includes any costs incurred by the trustee of the fund which has not otherwise been recovered by means of an investment fee, a buy-sell spread, a switching fee, an exit fee or an activity fee" be inserted at the end of the definition.

17) <u>Proposed new sub-section 29V(3) – definition of "investment fee"</u>

We submit that "investment fee" should be defined in accordance with the Global Investment Performance Standards. If this definition is not adopted we would suggest consideration be given to the definition utilised by members of the Financial Services Council.

Should neither of the above definitions not be adopted we make the following suggestions with respect to the proposed definition: -

- as the proposed first limb of the definition in sub-section 29V(3)(a) - *"fees in payment for the exercise of care and expertise in the investment of those assets (including performance fees)"* - simply represents one of the many direct, and indirect, costs of investing, we suggest this limb be deleted. An "investment fee" chargeable to a member should reflect all of the investment costs, irrespective of whether they are fees payable to a third party or other direct or indirect costs incurred by the trustee; and

- the definition instead should read: -

  *"*An **investment fee** is a fee that relates ~~directly~~ to the investment of the assets of the *MySuper product*~~fund~~ and includes any *investment* costs incurred by the trustee, or the trustees, ~~of the fund~~ (that are not otherwise *recovered by means of* ~~charged as~~ an administration fee, a buy-sell spread, a switching fee, an exit fee or an activity fee)".

If it were considered necessary, for the avoidance of doubt, reference could be made to performance-based fees by inserting the words "including performance based fees" after the words "investment costs".

Furthermore, provision should be made to recognise that there may be different "investment fees" for different cohorts within a lifecycle investment option.

18) Proposed new sub-section 29V(1) – "switching fee"

Proposed new sub-section 29V(5) defines a *switching fee* as being: -

> "*a fee to recover the costs of switching all or part of a member's interest within the fund:*
> *(a) from a MySuper product in the fund to a MySuper product in the fund; or*
> *(b) from a MySuper product in the fund to a choice product in the fund; or*
> *(c) from a choice product in the fund to a MySuper product in the fund; or*
> *(d) from a choice product in the fund to a choice product in the fund".*

It should be noted that proposed new sub-section 29V(1) states that: -

> *(1) The trustee, or the trustees, of a regulated superannuation fund that* ***offers a MySuper product*** *may only charge fees of one or more of the following kinds* ***in relation to that product****" (emphasis added).*

Accordingly, paragraphs (c) and (d) – which do not involve switching out of a MySuper product - should not be a circumstance in which a "switch – fee" can be charged "in relation to a MySuper product" but instead can be charged "in relation to the choice product".

Furthermore, we suggest that the definition of "switching fee" in paragraph (a) be confined to circumstances where the transfer is initiated by the member.

19) Proposed new paragraph 29V(6) – "exit fee"

Proposed new paragraph 29V(6) defines an *exit fee* as being "a fee to recover the costs of disposing of all or part of a member's interest in the fund".

In the context of fees which can be charged in relation to a MySuper product, this should be confined to "costs of disposing of all or part of a member's interest in the MySuper product".

20) Proposed new sub-section 29V(7) – "activity fee"

Proposed new sub-section 29V(7) defines an "*activity fee"* as being: -

> "*a fee to recover the costs incurred by the trustee, or the trustees, of the fund that:*
> *(a) are directly related to an activity of the trustee, or the trustees:*
> *(i) that is engaged in at the request, or with the consent, of a member; or*
> *(ii) that relates to a member and is required by law; and*
> *(b) are not otherwise charged as an administration fee, an investment fee, a buy-sell spread, a switching fee or an exit fee".*

While we appreciate that concept of a member "requesting" a particular activity take place, or that such an activity may be required by law, we are a little unclear as to what circumstances are envisaged whereby a member has "consented" to an activity but has not "requested" it. Accordingly, we suggest that the words ", or with the consent," be deleted.

We also suggest that the definition be confined to being with respect to the MySuper product.

21) Proposed new section 29VA – charging rules

Proposed new sub-section 29VA(2) states as follows: -

> *"(2) This rule is satisfied if:*
> *(a) the fee is charged in relation to all members of the fund who hold the MySuper product; and*
> *(b) the amount of the fee is the same for each of those members".*

Proposed new sub-sections 29VA(3) and 29VA(4) contain similar wording.

Lifecycle strategy investment costs will vary significantly depending on the stage of the lifecycle, the allocation of assets and the extent to which assets are actively managed.

In order to give effect to the policy of minimising the extent to which cross subsidisation occurs, the Bill should be amended to allow the trustee to charge different investment fees to members in a lifecycle investment option depending on their cohort.

22) Proposed new sub-section 29VA(3) – all members charged same percentage of balance

Proposed new sub-section 29VA(3) states: -

> *"(3) This rule is satisfied if:*
> *(a) the fee is charged in relation to all members of the fund who hold the MySuper product; and*
> *(b) the amount of the fee charged in relation to one member is a percentage of so much of the member's account balance with the fund that relates to the MySuper product; and*
> *(c) the amount of the fee charged in relation to each other member of the fund who holds the MySuper product is the same percentage of so much of that member's account balance with the fund that relates to the MySuper product".*

It is quite common for funds to charge a percentage of assets on the first tier of an account balance, say $200,000, and then a lower fee with respect to the next tier, and so forth. Similarly, percentage based fees can be subject to a maximum or "cap". Often a tiered scale is combined with a cap.

It would appear that this is not possible under sub-section 29VA(3) as currently drafted.

Is there a conscious decision not to allow the practice of tiered and capped asset fees to continue? It should be noted that this could potentially result in an increase in fees payable by members – surely an adverse outcome.

The "Review into the governance, efficiency, structure and operation of the superannuation system" clearly contemplated the use of fee schedules, not just one fee.

Abolishing tiered scales and fee capping potentially could lead in some funds to an exodus of high account balance individuals from MySuper products either into choice products or even into SMSFs.

We submit that, to accommodate the diversity of existing fee arrangements, the sections with respect to percentage-based fees should be redrafted in terms of there being one percentage fee **scale** used to determine the applicable fee.

23) Sub-sections 29VA(5), 29VA(6) & 29VA(7) – all members charged same activity fee

Proposed new sub-section 29VA(5) states: -

> "*This rule is satisfied if:*
> *(a) the fee is only charged in relation to those members of the fund:*
> *(i) who hold the MySuper product; and*
> *(ii) in relation to whom a particular activity is undertaken by the trustee or trustees of the fund; and*
> *(b) the amount of the fee charged is the same* ***for each member to whom it is charged****"* (emphasis added).

Proposed new sub – sections 29VA(6) and 29VA(7) contain similar wording.

One possible construction of this is that it would preclude charging a fee to the non-member spouse with respect to family law matters. This should be clarified.

24) Sub-paragraph 29VB(1)(b) – administration fees for employees of employer - sponsor

Sub-paragraph 29VB(1)(b) should allow for the associates of an employer-sponsor to also contribute to the fund as well as the employer.

Similar comments apply here as were made with respect to sub-sections 29VA(2) and 29VA(5) and with respect to sub-sections 29VA(3); 29VA(4); 29VA(6) and 29VA(7).

25) Sub-section 29VB(2), 29VB(3) and 29VB(4)– all employees charged same fee

Proposed new sub-section 29VB(2) states: -

> *"(2) The amount of the administration fee is the same for each of the employee members*".

Sub-sections 29VB(3) and 29VB(4) use similar wording.

We submit that this should be amended to allow for former employee members and relative and dependant members to be charged the same fee, but that this should not be mandatory. In other words, trustees and employers should be free to decide whether they will offer this fee to former employees and relatives and dependant members.

26) Proposed new sub-sections 29W(2) – strict liability – offering a product

Proposed new sub-section 29W(2) – with respect to offering a product as a MySuper product when not authorised to do so - creates an offence of strict liability.

While the heading refers to "offering a product", the text of the section refers to "makes a representation". This would appear to be extremely broad in its application, not just to RSE licensees, their authorised agents \ delegates and advisers but to anybody who makes a representation.

This breadth of application, together with proposed new sub-section 29U, which allows APRA to cancel the authority with immediate effect, would make strict liability especially harsh. It would be appropriate to allow a reasonable excuse defence to be raised.

27) Proposed new sub-sections 29WA(3) – strict liability – allocation of contributions

Similarly, proposed new sub-section 29WA(3) – with respect to contributions in relation to which no election has been made being paid into a MySuper product - also creates an offence of strict liability.

Quite apart from the current difficulties with the apparent requirement for an election to have been made with respect to each contribution, there is the issue that administrative and clerical errors do occur, both on the part of the employers and with respect to fund operations.

Given this, creating a strict liability offence is unduly harsh. It would be appropriate to allow a reasonable excuse defence to be raised.

28) Part 2—Application and transitional provisions
Item 12 - Applications for authority to offer a MySuper product for a large employer-sponsor

Please refer to our comments with respect to proposed new section 29TB.

It is unclear as to why an application should need to be made to APRA with respect to large employer - sponsored products at all, given that whether or not the relatively narrow criteria under sub-section 29TB(1) are met can be determined objectively by the trustee and simply assessed by APRA on review.

Even if an application has to be made to APRA, it is unclear as to why, under items 12(2)(a) and 12(2)(b), an application with respect to a section 29TB MySuper product: -

- will be deemed not to have been received until 1 July 2013, irrespective of when it is actually received; and
- in particular – APRA will have 120 days, in lieu of 60 days, to process the application.

Despite the relief granted by proposed new sub-sections 12(3) and 12(4), this nevertheless will mean that, should the application be refused, such a fund will not be able to accept contributions with effect from the date of refusal, which could be some months after the trustee may have made its application. This could prove especially problematic in circumstances where the refusal or deemed refusal is close to a deadline for the payment of SG contributions or contributions made under an industrial relations arrangement.

B) DRAFTING ISSUES

1) MySuper product definition

Given that a definition of *MySuper product* is being inserted into the SIS Act, it would be preferable if most references, such as those in the proposed insertions into the definition of reviewable decision, to a "class of beneficial interest in a regulated superannuation fund as a MySuper product" could instead refer to a "MySuper product". This could be achieved in all sections other than those which are definitional or 'threshold" sections or otherwise integral to the creation of the concept of a MySuper product, where the longer term would still need to be used.

2) Proposed new sub-section 29S(5)

Proposed new sub-section 29S(5) states as follows: -

> *"(5) If:*
> *(a) an RSE licensee applies for authority to offer a class of beneficial interest in a regulated superannuation fund as a MySuper product; and*
> *(b) after the application is made, but before APRA decides the application, information contained in the application ceases to be correct;*
> *the RSE licensee must give APRA the correct information, in writing, as soon as practicable after the information in the application ceases to be correct".*

For the avoidance of doubt, we would suggest inserting the words "becoming aware that" after the word "after" and substituting the words "has ceased" for "ceases" in the last line.

3) Proposed new section 29TC - characteristics of a MySuper product

Proposed new paragraph 29TC(1)(b) effectively states that within a MySuper product

> *"(b) all members who hold a beneficial interest of that class in the fund are entitled to access the same options, benefits and facilities".*

We submit that this should be qualified with an expression to the effect "to the extent permitted by superannuation law" (suitably defined) or "to the extent permitted under this Act" or "to the extent permitted under the general law or a law of the Commonwealth or of a State or Territory".

4) Proposed new paragraph 29TC(1)(c)

Proposed new paragraph 29TC(1)(c) states that within a MySuper product

> *"(c) amounts are credited to the accounts of members who hold a beneficial interest of that class in the fund in a way that does not stream income from any assets of the fund that are attributed to the class to the accounts of only some of those members, except to the extent permitted under a lifecycle exception (see subsection (2))"*

An alternate way of drafting this would be along the lines that "returns are credited to a member in proportion to the account balance held by that member".

In addition, if it is felt that trust law offers insufficient protection to ensure that the above occurs (although arguably it would be a breach of trust to do otherwise), then this may need to go further and specify that the returns credited to MySuper members must be attributable to MySuper assets.

5) Proposed new paragraph 29TC(e)

Proposed new paragraph 29TC(e) states that: -

> *"(e) if fee subsidisation by employers is permitted, that subsidisation does not favour one member who holds a beneficial interest of that class in the fund and is an employee of a subsidising employer over another".*

We submit that the word "associate" inserted after the word "employer" where it appears in the final line and the words "employee of that employer or associate" should be inserted at the end of the sentence.

6) Proposed new paragraphs 29TC(1)(f) and 29TC(1)(g)

Proposed new paragraphs 29TC(1)(f) and 29TC(1)(g) state: -

> *"(f) no limitations are imposed on the source of contributions made by or on behalf of persons who hold a beneficial interest of that class, other than those imposed by or under the general law or a law of the Commonwealth or of a State or Territory; and*
>
> *(g) no limitations are imposed on the kinds of contributions made by or on behalf of persons who hold a beneficial interest of that class, other than those imposed by or under the general law or a law of the Commonwealth or of a State or Territory".*

We suggest that these paragraphs be combined by inserting the words "or kinds" after the word "source" in paragraph (f) and deleting paragraph (g).

7) Proposed new paragraph 29TC(j)

Proposed new paragraph 29TC(j) states that: -

> *"(j) a pension is not payable by the trustee, or trustees, of the fund to a person on the satisfaction of a condition of release of benefits specified in a standard made under paragraph 31(2)(h) from assets held on account for the person in that class of interest".*

It may be worthwhile clarifying that an income stream as a result of a successful total but temporary disability benefit claim would not violate this prohibition.

8) Proposed new paragraphs 29U(2)(c) and 29U(2)(d)

Proposed new paragraphs 29U(2)(c) and 29U(2)(d) state that APRA may cancel an authority if: -

> *"(c) APRA is no longer satisfied that:*
> *(i) where the RSE licensee is a body corporate—the RSE licensee; or*
> *(ii) where the RSE licensee is made up of a group of individual trustees - each of those individual trustees;*
> *is likely to comply with the enhanced trustee obligations for MySuper products (whether because of a previous failure to do so, or for any other reason); or*
> *(d) APRA is no longer satisfied that:*
> *(i) where the RSE licensee is a body corporate - the RSE licensee; or*
> *(ii) where the RSE licensee is made up of a group of individual trustees - each of those individual trustees;*
> *is likely to comply with the fees rules in relation to MySuper products (whether because of a previous failure to do so, or for any other reason)".*

As individual trustees nevertheless act collectively it is unclear as to why reference is made to "each of" those individual trustees. If there is a concern about individual trustees consideration could be given to mandating that only corporate trustees can offer a MySuper product.

Further, we submit it would be preferable to combine these paragraphs by inserting the words "and fee rules" after the words "obligations" in paragraph 29U(2)(c) and deleting paragraph 29U(2)(d).

9) Proposed new paragraph 29U(2)(h)

Proposed new paragraph 29U(2)(h) states that APRA may cancel an authority if: -

> *"(h) APRA is satisfied that:*
> *(i) where the RSE licensee is a body corporate - the RSE licensee; or*
> *(ii) where the RSE licensee is made up of a group of individual trustees - one of those individual trustees;*
> *has contravened a provision of the governing rules of the fund relating to the MySuper product".*

Similarly to paragraphs 29U(2)(c) and 29U(2)(d), as individual trustee act collectively, it is difficult to envisage when one individual trustee may have contravened a provision of the governing rules relating to the MySuper product.

10) Proposed new sub-section 29V(1) – "buy – sell spread"

We suggest that the words "of the MySuper product" be inserted at the end of the definition.

11) Proposed new paragraph 29V(6)

Proposed new paragraph 29V(6) defines an *exit fee* as being "a fee to recover the costs of disposing of all or part of a member's interest in the fund".

In the context of fees which can be charged in relation to a MySuper product, this should be confined to "costs of disposing of all or part of a member's interest in the MySuper product".

12) Proposed new sub – section 29VA(1) - charging rules

Proposed new sub-section 29VA(1) states: -

> "*The trustee, or the trustees, of a regulated superannuation fund that offers a MySuper product may only charge a fee during a period if it satisfies one of the charging rules set out in this section in relation to that period".*

This restriction should be confined to being "in relation to the MySuper product".

13) Proposed new sub-sections 29VA(2), 29VA(3) and 29VA(4)

Proposed new sub-section 29VA(2) states: -

> *"**All MySuper members charged same flat fee***
>
> *(2) This rule is satisfied if:*
> *(a) the fee is charged in relation to all members of the fund who hold the MySuper product; and*
> *(b) the amount of the fee is the same for each of those members".*

Proposed new sub-sections 29VA(3) and 29VA(4) utilise similar wording.

Use of the phrase "charged in relation to" may prove problematic in circumstances where not all fees are charged to all members, such as the "buy – sell spread", "switching fee" and "exit fee" which are only incurred if a member requests a transfer or a roll-over out.

If it is intended that these sub – sections only apply with respect administration and investment fees then necessary changes will need to be made to the Bill.

With respect to fees, such as "buy – sell spread", "switching fee", "exit fee" and "activity fee" it may be preferable to substitute words to the effect of "payable by" for "charged in relation to".

14) <u>Proposed new sub-section 29VA(3)</u>

Proposed new sub-section 29VA(3) states: -

> ***"All MySuper members charged same percentage of account balance***
>
> *(3) This rule is satisfied if:*
> *(a) the fee is charged in relation to all members of the fund who hold the MySuper product; and*
> *(b) the amount of the fee charged in relation to one member is a percentage of so much of the member's account balance with the fund that relates to the MySuper product; and*
> *(c) the amount of the fee charged in relation to each other member of the fund who holds the MySuper product is the same percentage of so much of that member's account balance with the fund that relates to the MySuper product".*

We would suggest substituting the words "is a fixed percentage of the members' account balances" for "in relation to one member is a percentage of so much of the member's account balance"; substituting the word "relate" for "relates" and deleting paragraph (c). We would suggest a similar approach be adopted for proposed new sub-sections 29VA(4); 29VA(6) and 29VA(7).

15) <u>Proposed new sub-section 29VA(5)</u>

Proposed new sub-section 29VA(5) states: -

"(5) This rule is satisfied if:
(a) the fee is only charged in relation to those members of the fund:
(i) who hold the MySuper product; and
(ii) in relation to whom a particular activity is undertaken by the trustee or trustees of the fund; and
(b) the amount of the fee charged is the same for each member to whom it is charged".

It is not readily apparent from this sub-section that the activity should be at the request of the member or by virtue of the operation of the law. This is also the case for proposed new sub - sections 29VA(6) and 29VA(7).

* * * * * *