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the voice of super

File Name: 2012/36

18 May 2012

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 (FURTHER MYSUPER AND TRANSPARENCY MEASURES) BILL 2012

Thank you for the opportunity to prove comment in relation to the Exposure Draft of the *Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Bill 2012* ("Bill").

About ASFA

ASFA is a non-profit, non-politically aligned 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.

Our main concerns include the timing of the implementation; the interpretation of MySuper and choice; the application of a number of measures to choice as well as to MySuper and the undue restrictiveness of the branding, large employer and investment fee provisions. Comments which relate specifically to other aspects of the Bill have been enclosed in an annexure.

1. Timing of obligation to pay default contributions into MySuper

ASFA supports the commencement date of 1 July 2013. Having said that, however, there is an urgent need for the Government to amend the original, first tranche MySuper Bill to extend the date by which employers making "default" contributions in compliance with the Superannuation Guarantee ("SG") legislation must make them to a fund with a MySuper offering from 1 October 2013 to 1 July 2014.

ASFA strongly believes that this employer compliance date must be extended to 1 July 2014, as to do otherwise will place superannuation trustees under undue pressure to have a MySuper offering in place by 1st October 2013.

Compliance with these reforms will necessitate considerable changes being made to a mature and complex superannuation system. The Future of Financial Advice, SuperStream and APRA reporting reforms also have a significant impact on a number of superannuation funds.

Trustees need a degree of certainty to make the threshold decision whether to provide a MySuper offering, as well as the many consequent strategic and implementation decisions necessary to produce a MySuper offering.

At this time only the first and second tranches of the MySuper legislation have been introduced into Parliament and neither has been passed. The exposure draft of this Bill was only released on 27 April 2012 and we are yet to see an exposure draft of the fourth tranche. Further, a number of critical matters are to be prescribed in regulations.

Accordingly, as we are unlikely to see final legalisation until well into the second half of 2012, the time available to make all of the necessary decisions and implement the changes is reducing.

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 IT systems work commenced, until such time as there is a high degree of legislative certainty.

In order to meet the current statutory and APRA deadlines trustees need to perform analysis and make decision as to significant systems and other changes now - for example to provide business requirements to software providers – based on the details currently available, yet there are requirements which will be contained in the fourth tranche and in regulations which could be incompatible with such decisions. Obviously minor adjustments could be accommodated, however, major changes from what was anticipated would present a significant difficulty to trustee and service providers.

Change management of this magnitude and with a high degree of interrelatedness is not only expensive but, more importantly, making significant alterations to member databases and IT systems poses the risk of lost or corrupted data or functionality, which can result 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; identifying interdependencies; producing a staged project plan; including sufficient time for regression and user acceptance testing, and then executing in accordance with the plan.

All of this takes time and resources.

Often there are capacity constraints, interdependencies and unintended consequences, especially when it comes to implementing system changes. Rushing to meet deadlines materially increases the risks to a project and will increase costs, which are ultimately borne by the members.

Further to all this, there is considerable concern that MySuper applications to APRA in early 2013 will necessitate Board certification as to demonstrated compliance with the APRA Prudential Standards which will not be finalised until December 2012. Further, the APRA MySuper application form requires a detailed business plan, which is nigh on impossible given the amount of information which is still draft or unknown.

It should be noted that the Regulation Impact Statement with respect to the MySuper bill stated as follows (emphasis added): -

- "[t]he requirement that employers have to make default contributions to funds offering a MySuper product from **1 July 2014**" (Page 15);
- "It is expected most trustees will offer a MySuper product so they are able to accept default contributions from **1 July 2014**" (Page 17);
- " ... some MySuper products may not be licensed until close to **1 July 2014**" (Page 20)

To the extent that the time-frame is contracted, costs are driven up and the quality of outcome is potentially compromised. This is exacerbated by the fact that the entire industry is implementing the same reforms, with the available pool of resources, and is constrained to the same (shortened) timetable of needing to have MySuper in place for 1 October 2013, as opposed to 1 July 2014.

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

Should a fund, for whatever reason, not be in a position to have a MySuper offering in place by 1 October 2013 all of the employers who have nominated that fund as a default fund will be forced to go through the process of nominating another fund, advising their employees of this and then making default contributions to that other fund. This will have the effect of having to create a new account for all of the affected employees in the second fund to accept default contributions, possibly for a limited time, while their account balances remain in the first fund, thus subjecting these employees to multiple fees.

2. Interpretation that member who has <u>chosen</u> to invest money in investment option used for MySuper must be treated as MySuper member with respect to that money

There should only be two ways in which a person can be a MySuper member: -

- a person who has made no decision about their fund \ product of choice, and therefore has been defaulted into a fund's MySuper product; and
- a person who has actively chosen the MySuper product, either because they do not want to participate in investment choice or for some other reason, such as lower fees.

Considerable concern has been expressed about the apparent interpretation by Treasury and APRA that, simply because a member has chosen to have part or all of their money invested in the investment option utilised by MySuper, then that money must be treated as "MySuper money".

From a policy perspective this does not appear to be what the Cooper review intended as it made a distinction based on disengaged\MySuper and engaged\Choice members, as opposed to MySuper and Choice money. From a policy perspective the later distinction makes little sense.

It is largely a nonsense to ascribe various characteristics (e.g. single investment strategy; insurance; cost-recovery admin & investment fees; uniform options, benefits & facilities; higher trustee duties) to an investment option. MySuper should be a category of membership to which a member belongs.

The closest analogy to this would be the various categories or divisions in superannuation funds, or sub-plans in master trusts. Each member of the same category will have the same benefits and entitlements, access to the same investment options, the same insurance options and the same fee structure but these may differ from members in other categories. The important thing to note in this context is that each member is only ever a member of one category or division, with the benefits and fees which attach to that category. This is not a function of how their money is invested or which investment options they choose.

It is unclear what is the policy intent underlying this, or what will be achieved by introducing MySuper as applying to money, as opposed to members. Most significantly, considerable benefits to members may in fact be lost in the quest for "uniformity" within MySuper.

From a practical perspective different members sitting in separate classes of interest (category \ product) would be significantly easier to administer, as the benefits and fee structure would be attached to that member and their account, not to dollar amounts in investment options. In fact there are considerable practical issues with respect to administering MySuper as an "investment choice", including attaching insurance to an investment option as opposed to a member \ account.

Furthermore, there is the matter with respect to the fair allocation of costs between MySuper and choice products. It is likely that choice products will offer enhanced product features, such as member investment choice, more complex insurance and more interactive web access and as such may be more expensive.

Under the current proposal a member who is participating in member investment choice could choose to have part of their benefit in an option offer by a choice product and part in the investment option which is being used as the MySuper investment option. What would be the position of the trustee with respect to charging administration fees to that member? If MySuper & Choice monies are to have separate, cost recovery, administration fees - how will this work? In particular, it would appear that a member who had money in both MySuper & Choice investment options would need to be charged two admin fees (and two investment fees).

3. Definition of "accrued default amount"

Treasury's interpretation above – that if a member has chosen to have some or all of their money invested in the investment option utilised by MySuper they are to be treated as a "MySuper member" – has flowed through to the definition of "accrued default amount".

We query why – in circumstances where a direction as to the investment option has been given – an amount is to be treated as an accrued default amount. This amounts to the government interfering with, and effectively overriding, valid financial decisions made by the member.

The explanatory memorandum's rationale for this - that the member has "explicitly chosen to delegate responsibility for investment decisions to the trustee" – reveals a fundamental misunderstanding of the principles underpinning member investment choice (other than member directed products).

When a member exercises investment choice they are choosing between various investment options, in respect of ALL of which the trustee is ultimately responsible, and the member is delegating responsibility to the trustee with respect to ALL of those investment options. There is nothing special about the "default" investment option per se other than – as the name implies - it is the one into which members who have not made a choice have their contributions "defaulted". For members who have chosen to have part or all of their account balance invested in this option it is just like any other investment option – part of their diversified investment portfolio.

Similarly, the conclusion in the explanatory memorandum that a fund will not need to duplicate its default option, but simply re-badge it as its MySuper investment option, ignores the fact that a fund may also offer an account based retirement product in which pensioners participate in investment choice. The investment options offered almost inevitably include the investment option used as the default option.

The explanatory memorandum also ignores the fact that hybrid defined benefit members may have an accumulation account in respect of which the member may exercise investment choice, including the “default” investment option.

For all of the above reasons it may not be possible for a superannuation fund to simply rebadge its existing default investment option as a MySuper investment option. Instead, the trustee may well have to create an investment option which “mirrors” the MySuper investment option, whose assets are ultimately co-mingled prior to being invested, with the corresponding duplication of accounting and audit and attending increase in risk and expenses.

We submit that the definition of “accrued default amount” should be amended by deleting sub-paragraph 20B(1)(b)(ii) to remove the reference to members who have exercised investment choice and, in doing so, have chosen to have some or all of their superannuation in the fund’s default investment option.

4. Application of most provisions to choice products as well as to MySuper

We query why a number of measures apply to choice products as well as MySuper, as this significantly reduces any differences between MySuper and choice products.

The underlying policy rationale of MySuper was to create a relatively simple, low cost product for members who were defaulted in the fund and for members who were happy to have all of their money invested in the default option, while still allowing for choice products to be available for the more sophisticated or engaged members who wanted investment choice or other options not available in MySuper.

Further, there are issues with respect to the application to a number of the provisions – such as product dashboard, fees and portfolio holdings disclosure - to off-market or legacy products.

In particular, the imposition of obligations and restrictions with respect to the provision of insurance and the amount of fees with respect to choice products, has the effect of significantly limiting the ability of trustees to be able to continue to provide what are, effectively, current choice – or even off-market or legacy - products - which a member has chosen to be a member of, on their existing basis.

Accordingly, we suggest that the obligation to provide insurance and the restriction of the amount of fees charged be confined to MySuper products only.

If the policy objective were to make all superannuation offerings uniform, minimising the extent to which there could be product differentiation, and to impose various obligations and restrictions on all trustees, irrespective of whether the offering was MySuper or choice, it may be easier – and preferable – simply to introduce some requirements which would apply to all RSEs, with a couple of additional obligations with respect to products which receive and \ or hold default SG contributions. This would avoid a lot of the extra complexity and cost associated with having to create, and to apply to APRA to be licensed to offer, a MySuper product.

5. Branding

It is unclear why – in order for there to be two MySuper products in the same fund - the benefits of members and beneficiaries need to have been transferred in from another regulated superannuation fund and cannot, for example, be in two different sub-plans 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.

Further, it is unclear as to what is meant by "material goodwill", not why this should be the relevant criteria. 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? Why is this considered to be the determining factor as to whether there can be two MySuper products in the same fund? The retention of "goodwill" is just as relevant to employer-sponsored sub-plans within a master trust arrangements as it is for those who transfer in after the commencement of the legislation.

6. 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.

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". Employers and trustees should be free to decide whether or not former employees, and their relatives and dependants, are eligible to remain as members of the employer product - this should not be prescribed by legislation.

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.

Furthermore, the 500 employee measure for large employers excludes defined benefit members from the head count, however, it is conceivable that, for example, an employer \ trustee may want to offer a tailored employer product for 500 or more employees where the benefit design would be comprised of hybrid defined benefits. In addition, hybrid funds may have a closed defined benefit division and a growing, but still less than 500, accumulation division. We query the policy rationale which would preclude the employer \ trustee from being able to provide as a large employer sub-plan in the above circumstances.

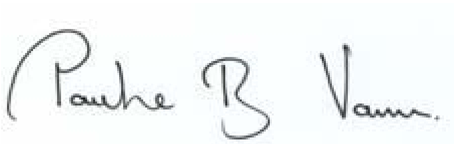
7. **Prescriptiveness re fees: -**
    a. **Lifecycle investment option – multiple investment options \ single investment fee**
    b. **Prohibition on caps on fee scales**

We query why a trustee offering a lifecycle investment option as its MySuper offering is restricted to charging a single investment fee, irrespective of the underlying costs of investing each life-cycle investment option. This would amount to a significant cross-subsidy of the more actively managed, more costly, usually younger investment options by the more passive, less costly, usually older investment options, which would generally far exceed any of the cross-subsidisations identified in the Cooper review, the catalyst for the Stronger Super measures.

Similarly, asset fees are limited to each member being charged the same percentage of their account balance. It is quite common for funds to cap fees by, for example, charging a percentage of assets on, say, the first $200,000 of the account balance and then a lower or no fee on the balance of the account. All members are charged the same percentage in accordance with the same scale, however, the actual percentage charged will be a function of account balance. It is not readily apparent why a ban on capping asset fees is being imposed. If the trustees, as fiduciaries, have determined that this is an equitable basis for charging fees then what is the underlying policy rationale which would prevent them from continuing to charge fees on this basis.

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

SPECIFIC ISSUES WITH THE BILL

A) FEES AND COSTS
Schedule 1 (Page 5)

Part 1 – Amendments

1) Application across choice as well as MySuper

There is concern among our members that the restriction on fees and costs applies across all products, including choice products, and not just MySuper as previously announced. This was not part of the policy announcements or subsequent discussions.

It is our view that fee restrictions, particularly around advice, should only be with respect to MySuper products.

Choice members are - by definition - engaged and have made the decision to acquire or move to a choice product for the features which it offers. One such feature of a choice product may well include the provision of personal advice, the cost of which is included in the fees. Such a choice should be one which it is open to the member to make.

2) Conflicted remuneration
Item 14 – new section 29SAC (Page 6)

It is unclear as to whether a trustee who remits money to an advice provider or pays an external adviser for intra-fund advice services provided to its members may possibly breach the conflicted remuneration provisions. Accordingly, it would assist if the Bill would be amended to clarify that the trustee is able to remit money to an advice provider without being in breach of the conflicted remuneration provisions.

3) Performance-based fees
Item 30 – new section 29VC (Page 10)

There is a view that the inclusion of mandated performance fee requirements is a step too far and that trustees should be free to manage their investments, and the costs associated therewith, as they consider appropriate, having regard to their fiduciary duties.

The exemption under sub-section 29VC(8) effectively states that a trustee does not breach the section if – despite the fact that the arrangement does not comply with one or more provisions of the section – the arrangement promote the financial interests of the MySuper beneficiaries. Surely this should be the guiding principle?

If this provision is to remain then guidance will be required as to the basis on which such a determination is to be made.

It should be noted as a matter of practicality that the criteria will present some significant challenges for alternatives and unlisted managers.

Further, with respect to some offshore managers with high demand for their capacity, this effectively may act as a “barrier to entry” which may result in their disengaging from the Australian market. This risks isolating Australia from significant offshore investment management talent. If a Trustee forms the belief that a particular manager is an appropriate investment, and is happy to pay for their services on agreed terms, then why should they not be free to do so in an open, competitive, market.

Part 11A – General Fee rules

4) Buy \ sell spreads to be charged on a cost recovery basis
New Section 99C(Page 13)

Buy-sell spreads are estimates of likely transaction costs, however, section 99C requires that a buy-sell spread must be charged only on a "cost recovery" basis.

As charging on the basis of recovering actual transaction costs may not be practical to apply, or to disclose, we submit that it should be clarified in the Bill that buy \ sell spreads based on a realistic, reasonable estimate of likely transaction costs would be compliant with this obligation.

5) Cost of advice to employers not to be borne by members
New section 99D (Page 13)

While we appreciate the underlying policy concern which this new section is addressing, there is concern that this provision requires clarification and potentially is unduly restrictive in that it may preclude the fund from providing general financial product advice to the employer with respect to their superannuation obligations and other related superannuation matters. This will adversely impact the close working relationship that trustees have with their employer-sponsors and will in turn be detrimental to their employees who are the members of the fund.

The provision of general financial advice to employers with respect to superannuation often facilitates the smoother, more efficient operation of the superannuation fund and engenders a level of engagement by the employer in their employee’s superannuation.

Trustees should be able to provide directly, or to facilitate through an external service provider, general advice to employers about superannuation with the cost of this able to be charged collectively across the members of the fund through the administration fee. The prohibition should be limited to the provision of personal advice only.

Accordingly, we suggest that the prohibition be amended such that “the trustee … must not include in any fee … an amount that relates to costs incurred … in relation to financial product advice provided … to an employer *other than general financial product advice with respect to the employer’s superannuation obligations*”.

Further, there is a concern that even advice as to such practical matters as the various payment options, such as a clearing house or other non-cash payment facility, for remitting contributions could be considered to fall under the definition of “financial advice” and be excluded. This should be clarified.

6) **Advice with respect to a financial product other than a member's beneficial interest in the fund**
Sub-paragraph 99F(2)(a)(i) (Page 14)

It is unclear what advice with respect to a financial product other than a member's beneficial interest in the fund may mean. At its narrowest it could be construed to mean, and thereby exclude: -

- advice to a MySuper member about a choice product that is available within the fund;
- advice to a choice member about a MySuper product which is available within the fund,
- advice to an accumulation member about a pension product which is available within the fund; and
- advice to a prospective member e.g. a new employee of an employer sponsor for whom the MySuper product is the default.

If this is the case then how is such advice to be paid for, if not through administration fees?

Also, it is not apparent whether sub-paragraph 99F(2)(a)(i) would allow advice with respect to insured benefits, given these benefits do not represent a beneficial interest in the fund but instead are a benefit which is contingent on the member becoming incapacitated or dying.

If this exception is intended to deal with the limitations of the sole purpose test, perhaps consideration could be given to drafting in positive terms which refer to the sole purpose test, as opposed to the current utilisation of what effectively amounts to a triple negative.

Notwithstanding that there is a distinction between intra- fund advice and personal advice which falls outside intra fund advice, there are considerable practical implications of this delineation when it comes to charging members.

It is commonplace for members seeking personal advice to be given both intra-fund advice and non intra-fund advice at the same time in their appointment with a financial adviser, as the advice can often segue from being intra-fund advice one minute to being outside intra-fund advice the next.

By way of example, a member may seek advice as to how to boost their retirement savings, however, one of the strategies identifies that the member could make a spouse contribution. As this is not with respect to the member's interest in the fund this is not intra-fund advice and the financial adviser will be required to advise the member that they will have to be charged a direct fee for this component of the advice. As it may be in the best interests of the member to consider making a spouse contribution, the adviser would be remiss if they were not to advise upon this, however, it would be a ludicrous outcome if the adviser had to break off the advice at this point and negotiate what would be a relatively insignificant fee for this component of the advice. Not only would this amount to a poor member experience, the costs of charging for the advice could largely outweigh the revenue.

It could prove difficult for the financial adviser to proportion the advice provided into intra-fund and non intra-fund advice and near impossible to explain to the members the magic line which has been crossed which has caused the member to incur a charge. This will be made even more difficult when the member only sought intra-fund advice initially but during the course of the meeting the adviser considers it in the best interests of the member to raise a matter which is not intra-fund advice.

We would ask that consideration be given to this. One possibility may be that, if as a result of the best interests duty, a small piece of incidental advice which is not intra fund advice is given to the member then, provided the advice is reasonably related to the intra-fund advice, a fee does not have to be charged.

7) Advice in relation to the giving of a direction to invest in a specified financial product Sub-paragraph 99F(2)(a)(iii) (Page 14)

It is unclear as to what the giving of a direction to the trustee by a member to invest in a specific financial product or financial products means.

Clarification is required that this provision would not prohibit the provision of advice with respect to an investment option of the fund which is an investment in a term deposit.

8) Ongoing provision of personal advice to the member New paragraph 99F(2)(b) (Page 14)

There is concern that this provision has been drafted too narrowly, especially with respect to paragraph (2) and its reference to the "ongoing provision of personal advice". There is a lack of clarity as to what this phrase means and how this would be applied in practice.

We would suggest that a more precise definition is required which addresses the issue which is of concern here.

B) <u>INSURANCE</u>

Schedule 2 – Provision of benefits (Page 16)

9) Ensure that the fund provided an insured death and permanent incapacity benefit Sub-section 68AA(1) (Page 16)

We query the application of this to choice products.

While there is an underlying policy rationale for this with respect to MySuper products, as members are defaulted into these products, there is no reason why choice products – which members choose – should be compelled to provide insurance. There may be a perfectly valid reason as to why a particular choice product does not provide insurance or – if it does – that is it not on an opt-out basis.

Accordingly, we suggest that this should be confined to MySuper products only.

Further, there is considerable concern that, notwithstanding that sub-clause 68AA(3) states that a trustee may determine reasonable conditions to which the provision of an insured death and TPD benefit is subject, nevertheless this obligation may be interpreted as meaning that the provision of such coverage is compulsory for all members.

Accordingly, we would appreciate confirmation that the determination of reasonable conditions may result in some members not being provide with cover, while the cover provide to others may vary in sum insured \ premiums \ exclusions etc. in accordance with the terms and conditions of the policy.

Further - given: -

- the obligation in proposed new paragraph 29TC(1)(b) – that a MySuper product must offer the same options, benefits and facilities; and
- the absence of a "free-standing", express "reasonable conditions" provision such as that found in sub-section 68AA(3)

this may create difficulties with respect to the provision of insurance cover other than death \ TPD, such as disability income.

It will need to be clear that such insurance may also be offered subject to "reasonable conditions".

10) Payable only if the member is suffering permanent incapacity
Paragraph 68AA(1)(a) (Page 17)

a) Why is "own occupation" being phased out in choice products?

A number of members have queried the policy underlying the phasing out "own occupation" TPD cover, especially in choice products.

We agree that there may be an argument that the higher "own occupation" premiums, and the less than full deductibility of premiums, may not be appropriate in a MySuper product.

Specialised and senior management employees, however, may be highly educated, skilled or experienced. As such, despite the fact that they are disabled to the extent that they are unable to continue in their own occupation, they are often considered not to meet the permanent incapacity test as they would be able to obtain employment, albeit a lower level \ grade or in a lesser position. Frequently, however, this results in a significant reduction in their salary and a corresponding diminution in their retirement income savings. For such employees the option of being able to access "own occupation" insurance in a choice product is a valid one and should remain. The amount of insurance paid into their superannuation fund, to be accessed upon retirement, would reflect the higher retirement income they would otherwise have had but for the disability.

The Government should investigate the number of members who would be adversely affected by this. This may be a particular issue for people such as small business owners.

Group life insurance within superannuation is often an affordable option for those members who need this kind cover. Compelling people to seek this cover on an individual basis outside superannuation will see a significant increase in costs \ premiums and some members unable to obtain cover.

Accordingly, we suggest that consideration be given to allowing choice products, but not MySuper products, to offer "own occupation insurance. If considered necessary this could be accompanied with requirements as to disclosure, to ensure members appreciate the difference between "own occupation" and "any occupation" insurance.

b) Possible alternative – amendment of conditions of release to allow "own occupation"

One possible alternative mooted by some members is to give consideration to amending the conditions of release such that amounts paid in the event that a member is unable to continue in their own occupation are able to be released.

The SIS conditions of release could be amended such that an "own occupation" definition of total and permanent disability is included as a condition of release. This will result in superannuation benefits being paid to claimants at an earlier time and may result in less reliance on Centrelink disability benefits, reflecting a net transference of the risk from the public sector to the private sector.

It should be noted that the SIS definition of permanent incapacity is based on the member being unlikely to return to work to which they are reasonable qualified by means of education, training or experience. This necessitates a subjective interpretation as to the likelihood of the member obtaining suitable employment, which may be more than just "any" occupation.

It would be preferable if SIS were to consider these aspects and adopt an own occupation \ profession definition which would be able to be utilised with respect to professionals and management, who would in any event be assessed under the "reasonably qualified by virtue of education, training and experience" component of the current SIS definition. The advantage of introducing such a condition of release is that it may limit the scope for differing interpretations by the trustee and insurer as to what "reasonably qualified" means in any given instances and thereby reduces the potential for disputation, which is an expensive and time-consuming process, which would be in the interests of all members.

c) Transition period for phasing out of "own occupation" – need for details

The phasing out of "own occupation" insurance over a transition period is likely to create considerable difficulties for trustees who currently have this type of cover and for the insurers themselves. Group insurance policies will need to be renegotiated and members will need to be transitioning out of "own occupation" cover into "any occupation" cover.

There is a question as to whether such a transition can occur without the member's consent. What happens if a member is materially disadvantaged by being unable to obtain replacement cover at comparable rates, or even at all? It is questionable the extent to which this can be considered to be in the best interests of the members.

Trustees will need sufficient time to renegotiate policies, develop and disseminate significant event notices and to make the necessary changes to Product Disclosure Statements and insurance disclosure materials. This will be a costly exercise, which will have to be borne by the members of the fund.

Accordingly, if the Government persists in prohibiting "own occupation" insurance within superannuation, there is a need for the transition period to be as long as possible and for more details about what will be entailed to be provided as a matter of urgency.

11) Ensure that members may elect not to have death and \ or TPD cover
Sub-section 68AA(6) (Page 17)

a) Why choice products as well as MySuper?

We query why choice products are included here and not just MySuper? Given that a member has exercised a choice to be in a choice product, why should a trustee not be able to offer a product with no insurance at all, "opt-in" insurance or even preclude "opting out" from insurance?

The underwriting and pricing of the risk of various insurance offerings is predicated on the design of that offering, including, amongst other things, the extent to which the insured may be able to be "selected against" and the likely risk profile of the pool of insured lives over time. Compelling "opt-out" with respect to choice products could materially alter the risk profile of the lives insured.

The somewhat paternalistic protection afforded by "opt-out" cover only really is warranted in a "default" product such as MySuper. Given that there have been a significant number of complaints by members to the Superannuation Complaints Tribunal over the years as to the deduction of premiums with respect to default "opt-out" insurance which the member did not want, there is an argument that such a regime should not be extended to choice products where the member has elected in writing to join the product.

Accordingly, we suggest that this be confined to MySuper products only.

b) Extremely limited application of sub-section 68AA(10)

Given the somewhat anomalous construction of the legislation such that: -

- a member who has any money in the option which is utilised by MySuper is a MySuper member, even if they also have money in a option offered by a choice product (as opposed to having 100% of their money in the MySuper product meaning a member is a MySuper member and having at least some money in a choice option meaning a member is a choice member); and
- attaching matters such as insurance to whether or not money is in a given investment options (as opposed to attaching to the member or to the member's account)

this has the effect that sub-section 68AA(10) will have extremely limited, if any, application to only those members who, in exercising investment choice, happen not to have any money in the investment choice utilised by the MySuper product. While the extent to which this occurs will be a function of the benefit design of the particular fund it is likely that, in all but lifecycle MySuper products, member with money in choice products are likely to have some money at least in the option utilised by MySuper as well.

Accordingly, sub-section 68AA(10) will have little application as an exception in funds which have both a MySuper and choice product.

c) **Electing not to have a death cover while retaining TPD cover**

This sub-section is not subject to sub-section (3) and reasonable conditions, however, a number of life insurance companies will not accept the risk for TPD cover only, which is what results if a member is allowed to elect not to have a death benefit but is able to retain a TPD benefit.

Accordingly, we suggest that, while members should be able to elect not to have either death nor TPD, or not to have TPD, they should not be able to elect not to have death but to retain TPD.

C) <u>COLLECTION AND DISCLOSURE OF INFORMATION</u>

Schedule 3 (Page 19)

Part 1 – Amendments

12) Product dashboard
Item 6 – New section 1017BA (Page 21)

a) **Application to all funds, irrespective of whether public offer or tailored employer MySuper**
New sub-section 1017BA(1) (Page 21)

It has been queried as to why the requirement to publish a product dashboard on the fund's website has been applied to choice products which are not public offer and to tailored employer MySuper products.

Even if such products were to be compelled to produce a product dashboard, we query why it would not be sufficient to disclose this to members, to facilitate comparison with other products, as opposed to publishing it to the world at large. It is of no relevance to persons other than members of that product as, not being public offer, person other than employees \ former employees and their relatives and dependants are unable to hold an interest in that product.

From a purely practical perspective, it is conceivable that some non-public offer funds, especially those whose members are only current employees, may not even have a public website but may instead utilise the employer's intranet. In other cases such funds may disclose similar information, such as financial information, in a "members' section" of the web-site which can only be accessed by members and not in the "public access" area of the web-site.

Accordingly, we suggest that a distinction be made for non public offer choice products and tailored employer MySuper products, such that product dashboard information need only be disclosed to members of the fund.

b) **Kept up to date**
Paragraph 1017BA(1)(b) (Page 21)

It is unclear as to what this means, especially with respect to such matters as the level of investment risk, which may fluctuate daily, or even more frequently, and the average amount of fees, which may vary depend on the value of the funds under management.

There needs to be a definition or principle with respect to how often updating is required with respect to each element.

Concern was expressed about the potential for confusion, given that this information would be presented concurrently with other fund information, such as annual report and PDSs, which may contain information produced on different timeframes. Comparison between the product dashboard and other materials will be inherently misleading to consumers unless measures are adopted to ensure that the timeframes for the currency of information contained in the product dashboard align with the annual report and PDS.

Accordingly, the requirement for the product dashboard to be “up-to-date” should be developed taking this into consideration, and in a number of cases this will mean an annual update. We note that ASIC will be able to issue a stop order if information contained in the product dashboard is misleading or defective.

c) The investment return target for the option
New sub-paragraphs 1017BA(3)(a) (Page 22)

In paragraph 1017BA(3)(a) the word “option” is not defined.

It is unclear as to how this could be achieved for some choice products, such as wraps and investor-directed portfolios services. On what basis could a trustee predict a 10 year return for single assets such as equities?

Lifecycle investment options with have a different target for each demographic\stage of the lifecycle. This will necessitate the disclosure of as many different targets as there are lifecycle demographic stages.

Similarly, it has been queried as to whether it should apply to whole of life and endowment policies.

Further, given this requirement, it has been suggested that the obligation to publish a product dashboard should only apply to new products which come to market on or after 1 July 2013.

d) Number of times the target has been hit
New sub-paragraphs 1017BA(2)(b)(i) and 1017BA(3)(b)(ii) (Page 22)

Concern has been expressed as to what is meant by setting out the number of times the target has been achieved for those assets in the last 10 years.

In particular, confirmation is sought that the frequency of the rolling date calculation should equate to the frequency of the target, most likely annual. In other words, if the target is an annual target then the rolling date calculation should be determined annually in arrears (i.e. is the number of years in the last 10 years, determined after the end of the most recently completed year), and should not be calculated on a more frequent basis. Reporting on a shorter term basis is meaningless.

Furthermore as MySuper will, by definition, be a new product it will need to be clarified whether the trustee is only able to report on the basis of the length of time that the MySuper product has been offered. Giving the need for consistency in reporting, if the product dashboard is to form the basis of any comparisons between products, it would appear that this should be the case.

It has been asked, however, where the trustee uses an existing investment option for MySuper, whether the trustee would be able to report with respect to the history of that option. This is not straightforward, as some funds will use the existing default as is, whereas others will modify it. This will beg the question as to the extent to which the investment option can be modified before it is sufficiently different that the trustee cannot utilise it to report on investment history.

e) Level of investment risk
New paragraphs 1017BA(2)(c) and 1017BA(3)(c) (Page 22)

How is this to be defined and measured? There are a number of measures of investment risk, such as downside deviation; risk of capital loss; cash-flow risk; diversification risk; liquidity risk; valuation risk; tax risk; expense risk etc.

Given that there is only one standard risk measure across this industry – the ASFA \ FSC risk measure which identifies the risk of a negative return in any 20 year period – and use of this measure is not compulsory, there is a considerable risk that the information will be reported on an inconsistent basis. This will produce misleading results if used to compare information across products, unless regulations prescribe the basis upon which various risk measures are to be determined.

f) Statement about liquidity
New paragraphs 1017BA(2)(d) and 1017BA(3)(d) (Page 22)

At a minimum, "liquidity", and the method of measurement, will need to be defined, otherwise liquidity measures across funds \ products will not be comparable.

We suggest, however, that the requirement for a statement of liquidity in the product dashboard be reconsidered and that it be left to the prudential standards, as it is not clear what is being measured and for what purpose. In particular, does this include contributions which are made into the product \ option, as well as the underlying investment made by the fund, as for some funds incoming contributions will be considerable for some time to come and will serve to ensure that a product \ option is essentially liquid.

g) Average amount of fees charged in relation to the product on a per member basis
New paragraphs 1017BA(2)(e) and 1017BA(3)(e) (Page 22)

Concern has been expressed that reporting the average amount of fees charged in relation to a MySuper product or investment option on a per member basis may be misleading. Reporting of average fees is not especially relevant and would only be meaningful if it were, for example, the average amount for an account balance of $X.

For MySuper products, where everyone pays the same fee (except under the employer exemption for admin fees) the fees should be the same for all members so the average would not be relevant.

One possibility may be to disclose the average amount of fees on a percentage basis, however, even that has the potential to be misleading depending on the extent to which, and in what combinations, funds charge their fees as a fixed, per member, fee as opposed to a percentage of funds under management.

If the average amount of fees is reported as a dollar amount it has the potential to be even more misleading, as the higher the average account balance in that particular product the higher the average dollar fee, even where the *rate* of fees charged is less. Accordingly, an average fee dollar amount would need to be reported either as an average of $X for every $50,000 in your account, or as a dollar amount with respect to a nominated account balance, say $50,000.

Another alternative may be to report fixed dollar fees and percentage costs separately.

There is also a question as to how to treat costs which are embedded in the unit price, as opposed to specific fees which are charged. Trying to combine the two gives a meaningless figure that only works for the account balance used in the calculation.

As the definition of fee appears to be restricted to fees charged by the trustee and appears to include exit fees and switching fees as well as administration and investment fees this would serve to inflate the average fees for funds which choose to include the fee for provision of financial advice in the administration fee as opposed to as an activity fee, as the latter is excluded from the definition of fee in section 1017BA.

Concern has also been expressed about the costs to manage all of this.

h) Strict liability offence
New paragraphs 1021NA (Page 26)

Concern has been expressed that imposing strict liability offences with respect to these obligations is totally inappropriate. This is especially the case with respect to the lack of definition of “up to date” – potentially it could be very easy to commit a strict liability offence of failing to keep the product dashboard “up to date”, whatever that means.

13) Requirement to publish portfolio holdings
Section 1017BB (Page 23)

a) General Comments

i) United States cited as precedent – yet no corresponding obligation on US pension funds

The United States has been cited as the leading example for disclosure of portfolio holdings. Importantly, however, there is no obligation on pension fund to disclose portfolio holdings, instead, this occurs at the level of mutual funds (managed investment schemes). The only top 10 US pension fund which discloses its portfolio holdings, once a year in its annual report, is CalPers. It is important to note that this had the effect of adding an additional 285 pages to the annual report.

ii) Self-regulation

There is a strong argument that – as opposed to imposing prescriptive statutory obligations – the industry should be allowed to self-regulate, utilising a combination of industry standards and market forces to produce a result which is appropriate and reflects stakeholder interests.

Discussion with ASIC had been based on self-regulation, with industry bodies providing guiding principles and there would be a long lead time to implement.

iii) Difficulties for trustees in obtaining and publishing information

There would be major difficulties on obtaining this information, especially with respect to managed investment schemes and fund of fund managers, where holdings are bundled and commercially sensitive such that not even the custodian is aware of them. It is not apparent whether many custodians would be able to provide this type of reporting.

Further difficulties are created for trustees who invest through a PST and unit trust into an underlying unrelated fund. This will result in a very long chain of reporting and at each level the RE or trustee at that level will have to work out the proportion applicable to the investor the next level up the chain. This will represent an inordinate amount of work and cost for little appreciable benefit, especially with respect to MySuper members who are not participating in investment choice.

View of one provider

One fund has indicated that, in order to establish the ease with which this requirement could be met, they reviewed their custodial data. It became readily apparent that significant resources would be required to breakdown and cleanse the custodial data before publication, which they consider would be the case for most, if not all, funds.

Further, the quantum of the data involved is significant - some 6,400 lines at the first level before the trustee splits out the various trust and fund of fund structures. The fund has then identified approximately 22,000 line items of data which, if published, would be very complex and meaningless to members.

The fund supports transparent portfolio reporting but feels it must be able to be presented in a sustainable way and in a manner which is comprehensible to members. Their initial thoughts were that, while they could understand the intent, they believe there needs to be further focus on the implications of the current requirements.

As an alternative they have suggested that the industry could establish guiding principles which would seek to publish meaningful data, at a summary level, which, while it would go beyond current levels of disclosure, would not be as extensive as that required under the Bill.

View of another provider

In principle we support disclosure of stock holdings. The challenge is to identify what level of detail to go down to and how this information should be supplied.

This depends on policy objective underlying this disclosure.

The benefit of holdings to the level of detail envisaged in the exposure draft is highly questionable for end-users.

One possible approach to disclosure would be to develop a tool which, for example, profiles the top 25-50 stocks and certain assets underpinning the investment option. The physical report is already 18 pages for the “balanced” investment option and if they were to add all 1600 stocks then the output would become unwieldy at 71 pages. This is not simpler for the client – either MySuper and Choice. If a client has just two investment portfolios the report would be 140 pages. How can this possibly assist members and consumers.

For choice products in particular, portfolio holdings could result in a list of thousands of assets (some representing as little as 0.0001% of total fund assets) which makes little sense in terms of digestible information for members or consumers and would actually inhibit capacity to undertake meaningful comparisons. A typical conservative, balanced and growth type of investment option may well hold traditional assets, “alternative” assets, unlisted assets and derivatives. The number of stocks frequently runs well over a thousand.

It will require a significant amount of effort and cost to convert many of the non-equity stock codes into something understandable for the general consumer (for example bond issuance codes, derivative codes etc). Some multi-sector investment options include derivatives which are used predominantly for hedging purposes. Further to this there are futures and options within the data used by the portfolio to take certain positions in currency, equities and fixed interest so stripping out these instruments would mean that the total allocation will not reflect exactly 100.00%.

The complexity will be very similar for any fund which has a mix of asset classes. Many in the industry would be severely challenged to be able to disclose this level of detail and we question the value of the cost and benefit to the member or consumer.

We also note that in the MySuper space there is a reasonable probability that a member is relatively disengaged – what use does this level of disclosure have for those members? We query whether the considerable costs of compliance, some of which will have to be passed onto MySuper members, really warrant the benefit to a small minority of highly engaged members?

Expecting a trustee to be responsible for this across hundreds of choice investment options will result in significantly higher costs. Derivative positions, a common feature of some fixed interest managers, let alone investment-overlay managers, are not straightforward “holdings” to report and interpret.

There are other flow-on consequences, particularly in terms of capacity for trustees to source investments from overseas managers. The “assets derived from assets”, whilst designed to eliminate cloaking of underlying investments, may prove problematic. For example, certain offshore fund-of-hedge-fund managers, who historically have not disclosed their underlying hedge fund investments and are not required to do so in their other major markets, may withdraw their product from use by Australian superannuation funds.

Certain assets within unlisted property or infrastructure funds, as an example, are housed in special purpose vehicles for a variety of reasons including co-investment parties, debt recourse containment, etc. Are these intended to be caught by the “assets derived from assets” provisions?

All of the above simply increases the cost of compliance without little real benefit.

We believe there is a distinct possibility that trustees may wind back exposure to certain kinds of managers and assets, especially overseas, if continuing to invest with these managers threatens the capacity to comply with these requirements.

The provider made the following recommendations

- one alternative approach may be a tool similar to that outlined above, which profiles only the top 25-50 stocks and certain assets underpinning investment products. Even in this case, however, exceptions for certain options would be necessary. For example, term deposits have a different rate every week and can have a range of terms and choice products often will offer a range of term deposits. This quickly becomes unwieldy.

- at the very least there parameters for level of accuracy, and the option not to publish if the RSE is not confident of the accuracy of the data, would need to be incorporate, with a concomitant exception from the strict liability that attaches to these provisions.

iv) Costs

The cost of publishing all of the required information would appear to be prohibitive, especially when compared to any potential value it may provide for members.

We query the policy objectives, beyond increased transparency. Realistically, it is most unlikely to be used to inform consumer decision making.

The amount of information required to meet the obligation to publish portfolio holdings is extreme and of little value to the member.

Accordingly, the compliance costs of this obligation as currently framed are likely to far outweigh any benefit to fund members, who ultimately will be bearing the brunt of the costs. As such, this obligation should be subject to a proper cost \ benefit analysis as part of the regulatory Impact Statement.

v) Alternative 1 - impose obligation directly into investment managers

If it is decided to persevere with the full disclosure then an alternative to trustees being forced to police investment manager disclosure would be for portfolio managers, managed investment schemes and find of funds to be required to make full disclosure. Superannuation funds could then publish links to the investment managers' web-sites to enable the complete portfolio holdings to be available. This approach would provide transparency while avoiding the need for onerous contracts, monitoring, and systems changes for superannuation funds.

Discussions with ASIC to date have centred on disclosure by trustees at the first legal level with investment managers to disclose further on their own websites.

vi) Alternative 2 – scale back obligation to make more meaningful and cost effective

This obligation should be scaled back to something more meaningful to the member and cost effective, such as more analytical summaries on the funds characteristics and risk profiles. This could include information about such matters as the location (country and sub-sector) of different groups of assets but may stop short of dollar values \ percentages of each asset.

b) Specific comments re the Bill

i) Publish not later than 60 days after each reporting day
New sub-section 1017BB(1) – (Page 23)

Given the complexity of what is being proposed, that trustee are forced to rely upon third parties to provide the information and that the industry will need to "gear-up" to meeting this requirement from an effective "standing start", a lag of 60 days after the end of the reporting period to publish this information simply would not be achievable. Regard should also be had to the fact that non-compliance incurs a strict liability offence.

Accordingly, a lag of 90 days is necessary in order to ensure all of the data is available to be published.

While a time lag is necessary to enable the information to be collated and published, and to keep confidential certain commercially sensitive information and other intellectual property for a period of time, it should be noted that this delay significantly limits the usefulness of the published information as the exposure of the fund will possibly have altered significantly during this time.

ii) Information sufficient to identify each financial products in which assets invested
New sub-section 1017BB(1) – (Page 23)

It is unclear here as to what is meant by "financial product"? The explanatory memorandum says the intention is to organise by each MySuper and choice product but it is arguable that the correct interpretation of this provision in the Bill is that the obligation is to publish information relating to each financial product *in which the fund is invested*.

Data collection organised by investment products – MySuper and choice - as proposed in the explanatory memorandum will be complex and costly for many funds and \ or custodians, especially where look through to underlying managed investment schemes, derivatives etc. is required.

iii) Financial products or property acquired outside jurisdiction exempted
New sub-section 1017BB(4) (Page 24)

It should be noted that this exemption – created presumably because of the difficulty of enforcing obligations extra-territorially – further impacts on the usefulness of the information published.

iv) Obligation to provide information relating to investment of assets
New section 1017BC (Page 24)

There is an obligation on investment managers to provide the data to the trustee if they enter unto an arrangement on or after the date of Royal Assent. Where there is an ongoing appointment of an investment manager which pre-dates Royal Assent the trustee will have to rely on the co-operation of the investment manager to obtain the data.

If the trustee inadvertently publishes inaccurate or incomplete date it will be committing an offence punishable with a penalty of 100 penalty units or imprisonment for 2 years or both.

In the absence of co-operation by the investment manager the trustee will be forced to rely on the defence. This is totally inappropriate. Where the trustee is unable to compel a commitment from the investment manager it should not have to demonstrate that it took reasonable steps to ensure that the information would not be misleading or deceptive.

Further, as the obligation to provide information only applies to new contracts entered into from the day of Royal Assent, this could result in a long period where the information published is incomplete because trustees are unable to obtain some of the information, further impacting on the usefulness of the information.

These are further reasons why the Corporations Act should be amended to impose a direct obligation upon investment managers to disclose such information.

v) Strict liability offence – trustees obligation to publish information
New paragraphs 1021NB (Page 29)

Concern has been expressed that imposing strict liability offences with respect to these obligations is totally inappropriate. This is especially the case as there is a limit to the extent to which the board can exercise governance oversight, particularly with respect to third parties, and having regard to the somewhat limited nature of any potential harm which may be considered to arise.

It is also considered that the level of penalties also appears to be far too onerous, particularly as it is an offence irrespective of whether the information is known to be defective. Given the current approach, trustees are being forced to rely on their investment managers and custodians – they are not in a position to verify that the information is correct.

If the strict liability provisions are not removed they should be modified to allow trustees to reasonably rely on the information provided to them and exceptions from timing rules created conflicted where the data cannot be sourced in the time specified.

vi) Strict liability offence – third parties obligation to provide information
New paragraphs 1021NC (Page 31)

It is unclear as to how the offence provisions in relation to failure to notify will work in the case of overseas managers – presumably they would be unenforceable.

14) Reporting Standards

Quarterly reports about superannuation
Item 41 – New section 348A (Page 42)

It has been questioned why an undue focus has been placed on short-term returns through the mechanism of publishing quarterly MySuper returns. There is considerable tension here between adopting the long-term view appropriate to superannuation and the publication of date quarterly, which only serves to encourage short-term thinking.

Concern was also expressed about the need for all funds to produce a new quarterly return of information to APRA and the costs which this would necessitate.

D) MODERN AWARDS AND ENTERPRISE AGREEMENTS
Schedule 4 – Page 46

Concern was expressed that this schedule has not addressed the circumstances where a hybrid defined benefit scheme – where benefits are a combination of both a defined benefit and one or more accumulation accounts – may not apply for a MySuper authorisation or may, at some point in the future, separate the MySuper product into a different fund. It was considered that – notwithstanding this – such a hybrid defined benefit fund should be able to be named in an award.

E) DEFINED BENEFIT MEMBERS

Schedule 5 – Page 51

The 500 employee measure for large employers excludes defined benefit members from the head count, however, it is conceivable that, for example, an employer \ trustee may want to offer a tailored employer product for 500 or more employees where the benefit design would be comprised of hybrid defined benefits. We query the policy rationale which would preclude the employer \ trustee from doing so.

F) MOVING ACCRUED DEFAULT AMOUNTS

Schedule 6 – Page 54

15) Definition of "accrued default amounts"
Sub-paragraph 20B(1)(b)(ii) (Page 54)

As referred to in our covering letter, concern has been expressed that "accrued default amount" includes money which has been placed in the "default" option by choice, as opposed to being confined to members who, in the absence of an investment choice, may have been "defaulted" into the "default" option.

Example of one corporate fund

Of the approximate 13,500 members in this corporate fund there are only around 20 who have not made an investment choice. The fund has offered choice of fund for many years and considers that it would be difficult to conclude – as a matter of policy - that the members who have chosen to be invested in whole or in part in Moderate Growth (nominated default option) are not choice members. As a matter of policy it considers that these members are not "default members" or members with "accrued default amounts" because, with the exception of the 20 or so members, there was no "defaulting" into the investment option with respect to the choice members, instead, these members have made active investment choices.

This fund would like to see the definition of "accrued default amounts" exclude those members who have actively chosen an investment option, be it the fund's nominated "default option" or otherwise. Funds would need evidence to support this, but as the trustee's is exposed to investment risk if they misallocate a member's contributions or accrued balance, as a matter of prudent governance \ commercial risk management the existing general practice of trustee is already to retain evidence of the member's choices.

This fund has spoken to a number of members about this and their view was that the Government requiring them to opt out of being transferred out of an investment option which they had already actively chosen is both senseless and confusing. This would seem to indicate that there is a risk that members may not respond to the opt-out notice, quite apart from the usual issues with respect to such notices not being received in time (if member away from home) or at all (if have moved address).

This fund expects that many other funds would also have members who have actively changed their investment options over time and may have all or some monies in the "default option" and thereby fall under the transition rules with respect to transferring "accrued default amounts" who, likewise, consider themselves "choice" members who have actively chosen under the investment choice rules.

We submit that the definition should be amended by deleting sub-paragraph 20B(1)(b)(ii) to remove the reference to members who have exercised investment choice and, in doing so, have chosen to have some or all of their superannuation in the fund's default investment option.

Further, it has been suggested members under an enterprise bargaining agreement should be treated the same as defined benefit members to permit accrued amounts to be held in a choice product.

Issue of interpretation

A further issue is with respect to the correct interpretation of the concept of where the amount is invested in the investment option which *would be* the default investment option.

Given the use of the phrase "would be", it is difficult to interpret precisely what this means. Does this mean the investment option which: -

- was the default when the contribution(s) giving rise to the accrued amount were made;
- was the default when the investment choice \ switch (into that option) was made;
- was the default investment option when the trustee applied for a MySuper authorisation; or
- was the investment option which the trustee decided would become the option utilised by MySuper.

Depending on the correct interpretation of the above, this may give rise to anomalous outcomes where, for example, the "investment option which would be the default option", whatever that may be, is a balanced option, which the member has consciously chosen, and the new option utilised by MySuper is a lifecycle option. In this case, in the absence of an opt-out (which can occur for a variety of circumstances), the member would have whatever amount was invested in the balanced option transferred into a lifecycle option, despite having chosen for it to be invested in the balanced option. Is the intended policy outcome?

16) Transfer of accrued default amount after the end of the transitional period in 2017
New section 29SAA (Page 56)

There may be an issue with respect to the 90 days action period in which transfer accrued default amounts as this may not provide sufficient time to give the affected members a significant event notice to enable them to opt out of the transfer.

17) Potential loss of insurance cover upon transfer
Section 29XA (Page 58)

While this provision provides that the trustee is not subject to any liability for giving effect to a transfer, nevertheless, a member losing insurance cover as a result of a transfer is a sub-optimal policy outcome.

18) Power to effect transfer
New section 55B (Page 58)

While the Bill provides that a provision in the governing rules is void to the extent that they may prevent the trustee giving effect to certain transfer, it may need to go further and contain a "deeming" provision to give the trustee the power to transfer members to the MySuper product within its fund, or if it is not offering such a product, to a MySuper product in another fund, without the need for member consent.

G) <u>ELIGIBLE ROLLOVER FUNDS</u>
Schedule 7 – Page 62

ASFA supports any measures which are designed to reduce the number of accounts within the superannuation system. As the ATO's database becomes more comprehensive we suggest consideration be given to developing an obligation upon Eligible Roll-Over Funds (ERFs) to attempt to identify members who have active accounts in another fund to which their account in the ERF could be transferred.

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