

14 August 2018

Manager  
Financial Services Unit  
Financial System Division  
The Treasury  
Langton Crescent  
Parkes ACT 2600  
[productregulation@treasury.gov.au](mailto:productregulation@treasury.gov.au)

Dear Sir or Madam

Thank you for the opportunity to comment on a second version of the draft legislation for the design and distribution obligations.

Our earlier submission (dated 2 February 2018) was confined to the question, initially posed in the Proposals Paper of December 2016, as to whether there are any financial products that should be excluded from the design and distribution measures.

We note MySuper products have been exempted from the design and distribution obligations; however, we remain unsure as to why defined benefit (“DB”) schemes have not been exempted as well. A policy that exempts MySuper products from design and distribution obligations but not DB schemes seems to misunderstand the history, structure, design and purpose of DB schemes.

The Super System Review (2009) ultimately concluded that DB schemes should automatically qualify to receive default contributions. The Final Report concluded that: “defined benefit funds have served many members well over a long period because they provide greater certainty about the amount of the retirement benefit and because members do not bear the investment risk” and, in the context of default superannuation, made three key recommendations:

6.13 Defined benefit funds should automatically qualify as ‘default’ funds for SG Act purposes in respect of the defined benefit provided to members so long as the fund meets the requirements of the SG Act to receive contributions.

6.14 If the defined benefit fund is a hybrid fund, then the MySuper criteria must be met for accumulation members in order for the fund to be accepted as a default fund under the SG Act in respect of those members.

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6.15 If a member has both defined benefits and accumulation benefits as part of the defined benefit fund's benefit design, and the accumulation benefit is not necessary to meet the employer's SG Act obligations, then the MySuper criteria do not have to be met in respect of those members.

This is clear recognition that DB schemes are quite different to retail financial products and need to be treated equivalently to other default superannuation products i.e. MySuper

A DB scheme, rather than offering a product, is better thought of as managing deferred remuneration (i.e. an entitlement to receive a benefit based on a formula linked back to past service, benefit salary and other relevant factors). A DB scheme is, after all, not a product in any conventional sense i.e. a product being distributed to consumers. After all, membership of UniSuper's DB scheme is *not* open to the general public and is *not* distributed in the way conventional financial products are i.e. sold through distribution channels. Membership of the DB scheme, in fact, arises directly and only as a result being employed in the higher education and research sector. This workplace entitlement, rather than being sold through distribution channels, emanates directly from employment arrangements and the industrial agreements that cover the higher education and research sector.

Further, UniSuper Ltd, the Trustee of UniSuper, has no industrial standing in these agreements and has, consequently, limited power to determine who is covered by these agreements. The main power UniSuper has is to ensure that our benefit design remains suitable for employees in the sector. We submit that this duty is already being met through the exercise of governance arrangements applying to the scheme and through meeting existing duties under trust law and compliance with prudential and other regulations.

Thus, to ensure consistency with existing default superannuation regulation (i.e. MySuper), we submit that DB "products" also need to be exempted from these proposals.

We suggest a change to draft legislation at section 993DB(2), as follows:

*993DB (2) This section does not apply to*  
*(i) A MySuper product; or*  
*(ii) A defined benefit product\**

While we remain unconvinced that "product" is the right concept to apply to a DB scheme, we believe that the above is a workable definition for DB schemes - restricted in its application to Corporations Law obligations – and could be included<sup>1</sup> as follows (under section 993DA Definitions):

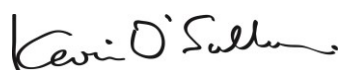
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<sup>1</sup> A definition of defined benefit product that applies more broadly to tax and superannuation law would create inconsistencies in existing law which should be avoided wherever possible.

**Defined benefit product** is a class of beneficial interest in a regulated superannuation fund held by defined benefit members

Thank you for the opportunity to provide comments on the exposure draft. Should you wish to discuss these comments, in the first instance, please speak to Benedict Davies, Public Policy Manager on 03 8861 6670.

Yours faithfully

A handwritten signature in black ink that reads "Kevin O'Sullivan". The signature is written in a cursive style with a large initial 'K' and a long, sweeping underline.

Kevin O'Sullivan  
Chief Executive Officer