Superannuation Legislation Amendment (MySuper Core Provisions) Act 2012

No. 162, 2012

An Act to amend the law relating to superannuation, and for related purposes

Note: An electronic version of this Act is available in ComLaw (http://www.comlaw.gov.au/)

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An Act to amend the law relating to superannuation, and for related purposes

[*Assented to 28 November 2012*]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Superannuation Legislation Amendment(MySuper Core Provisions) Act 2012*.

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	**Column 2**	**Column 3**
Provision(s)	**Commencement**	**Date/Details**
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	28 November 2012
1A. Schedule 1, item 1A	The day this Act receives the Royal Assent.	28 November 2012
2. Schedule 1, item 1	1 January 2014.	1 January 2014
3. Schedule 1, items 2 to 13	A single day to be fixed by Proclamation.	

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—MySuper

Part 1—Amendments

Corporations Act 2001

1A At the end of subsection 1017B(1A)

Add:

; and (c) without limiting paragraph (a) or (b)—any replacement of a kind specified in regulations made for the purposes of this paragraph of a beneficial interest of a class that is a MySuper product with a beneficial interest of another class in a superannuation entity.

Superannuation Guarantee (Administration) Act 1992

1Paragraph 32C(2)(c)

Repeal the paragraph, substitute:

(c) a class of beneficial interest in the fund is a MySuper product within the meaning of the *Superannuation Industry (Supervision) Act 1993*; and

(d) the fund complies with the requirements (if any) set out in the regulations in relation to offering insurance in respect of death.

Superannuation Industry (Supervision) Act 1993

2 Section 4 (after table item dealing with Part No. 2B)

Insert:

2C	MySuper

3 Subparagraph 6(1)(a)(i)

Repeal the subparagraph, substitute:

(i) Parts 2A, 2B and 2C;

4 Subsection 10(1)

Insert:

choice product: A class of beneficial interest in a regulated superannuation fund is a ***choice product*** if it is not a MySuper product.

5 Subsection 10(1)

Insert:

fees rules,in relation to MySuper products,means the rules in Division 5 of Part 2C.

6Subsection 10(1)

Insert:

MySuper product: A class of beneficial interest in a regulated superannuation fund is a ***MySuper product*** if an RSE licensee is authorised under section 29T to offer that class of beneficial interest in the fund as a MySuper product.

7 Subsection 10(1) (after paragraph (do) of the definition of *reviewable decision*)

Insert:

(doa) a decision of APRA under subsection 29T(2) to refuse to authorise an RSE licensee to offer a class of beneficial interest in a regulated superannuation fund as a MySuper product; or

(dob) a decision of APRA under subsection 29U(1) to cancel an authority to offer a class of beneficial interest in a regulated superannuation fund as a MySuper product; or

8 Aftersubsection 29E(6)

Insert:

RSE licensees authorised to offer MySuper products

(6A) The following additional conditionsare imposed on each RSE licensee that is authorised to offer a class of beneficial interest in a regulated superannuation fund as a MySuper product:

(a) the RSE licensee must ensure that the governing rules of thefund are not varied so that section 29TC is no longer satisfied in relation to that class of interest;

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

9 After Part 2B

Insert:

Part 2C—MySuper

Division 1—Object of this Part

29R Object of this Part

(1) It is intended that all MySuper products will be simple products sharing common characteristics.

(2) The object of this Part is to ensure that a class of beneficial interest in a regulated superannuation fund is not offered as a MySuper product unless it has those characteristics.

(3) This is done by requiring the RSE licensee of a regulated superannuation fund to obtain authority from APRA before offering a class of beneficial interest in the fund as a MySuper product.

(4) The ability of an RSE licensee to offer a MySuper product is significant for the purposes of the *Superannuation Guarantee (Administration) Act 1992*. Under that Act, employers will need to pay contributions for an employee who has no chosen fund into a fund that offers a MySuper product, in order to meet the choice of fund requirements and so avoid an increased individual superannuation guarantee shortfall for the employee.

Division 2—Applying for authority

29S Application for authorityto offer a MySuper product

Who may apply?

(1) An RSE licensee may apply to APRA for authority to offer a class of beneficial interest in a regulated superannuation fund as a MySuper product.

Requirements for applications

(2) An application for authority to offer a class of beneficial interest in a regulated superannuation fund as a MySuper product must:
  (a) be in the approved form; and
  (b) contain the information required by the approved form; and
  (c) state the RSE licensee's and the fund's ABNs; and
  (d) be accompanied by an up-to-date copy of the trust deed by which the fund is constituted (except to the extent that the trust deed is constituted by governing rules of the fund); and
  (e) be accompanied by an up-to-date copy of the governing rules of the fund (except to the extent that the governing rules are constituted by the law of the Commonwealth or by unwritten rules).

Notifying certain changes while applications are pending

(3) 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, the trust deed (other than the governing rules of the fund) by which the fund is constituted is varied or revoked and replaced;

the RSE licensee must lodge an up-to-date copy of the trust deed with APRA as soon as practicable after the trust deed is varied or revoked and replaced.

(4) 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, any governing rules of the fund (that are not constituted by the law of the Commonwealth or by unwritten rules) are varied or revoked and replaced;

the RSE licensee must lodge an up-to-date copy of the governing rules (that are not constituted by the law of the Commonwealth or by unwritten rules) with APRA as soon as practicable after the governing rules are varied or revoked and replaced.

(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.

(6) An application is taken not to comply with this section if subsection (3), (4) or (5) is contravened.

Note: APRA cannot give authority to offer a class of beneficial interest in the fund as a MySuper product while the application does not comply with this section: see paragraph 29T(1)(a).

Lapsed applications

(7) An application for authority lapses if:
  (a) it was made by an RSE licensee; and
  (b) the RSE licensee ceases to be an RSE licensee before:
    (i) APRA makes a decision on the application for authority; or
    (ii) if APRA's decision with respect to the application is subject to review under this Act—the review is finally determined or otherwise disposed of.

29SA APRA may request further information

APRA may give an RSE licensee that has applied for authority to offer a class of beneficial interest in a regulated superannuation fund as a MySuper product a notice requesting the RSE licensee to give APRA, in writing, specified information relating to the application.

Note: A failure to give the requested information delays the time within which APRA must decide the application: see paragraph 29SB(1)(b).

29SB Period for deciding applications for authority

(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) within60 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).

(2) APRA may extend the period for deciding an application by an RSE licensee for authority to offer a class of beneficial interest in a regulated superannuation fund as a MySuper product by up to 60 days if APRA informs the RSE licensee of the extension:

(a) in writing; and

(b) within the period in which it would otherwise be required to decide the application under subsection (1).

(3) If APRA extends the period for deciding an application for authority to offer a class of beneficial interest in a regulated superannuation fund as a MySuper product, it must decide the application within the extended period.

(4) If APRA has not decided an application for authority to offer a class of beneficial interest in a regulated superannuation fund as a MySuper product by the end of the period by which it is required to decide the application, APRA is taken to have decided, at the end of the last day of that period, to refuse the application.

Division 3—Authority

29TAuthority to offer a MySuper product

(1) APRA must authorise an RSE licensee to offer a class of beneficial interest in a regulated superannuation fund as a MySuper product if, and only if:

(a) the application for authority complies with section 29S; and
(b) the applicant has provided to APRA all information that the applicant was requested, under section 29SA, to provide, or the request has been disposed of; and
(c) the fund is registered under Part 2B; and
(d) either:
  (i) the fund has 5 or more members; or
  (ii) APRA is satisfied that the fund will, if authority is given, have 5 or more members within a period specified in the authority; and
(e) the fund isnot an eligible rollover fund (within the meaning of Part 24); and
(f) one of the following subparagraphs applies:
  (i) the licensee is not already authorised to offer another class of beneficial interest in the fund as a MySuper product;
  (ii) the licensee is already authorised to offer another class of beneficial interest in the fund as a MySuper product, but section 29TAor 29TB is satisfied, in relation to the class of beneficial interest in the fund to which the application relates, at the time APRA gives authority;
  (iii) the licensee is already authorised to offer another class of beneficial interest in the fund as a MySuper product, but section 29TA or 29TB was satisfied in relation to each class of beneficial interest that the RSE licensee is already authorised to offer as a MySuper product, at the time APRA gave that earlier authority; and
(g) APRA is satisfied that section 29TC is satisfied in relation to that class of beneficial interest; and
(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—each of those individual trustees;

  is likely tocomply with the enhanced trustee obligations for MySuper products; and
(i) 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—each of those individual trustees;

is likely to comply with the fees rules in relation to MySuper products; and

(j) APRA is satisfied that the RSE licensee is not likely to contravene section 29W or 29WA.

(2) Otherwise APRA must refuse to give the authority.

29TAProduct in another fund in which there is already material goodwill

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 additionalMySuper 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 MySuper products within the fund.

29TBMySuper products for large employers

(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, one employer is specified as a large employer in relation to the fundwho is relevant to that class of beneficial interest; and

(b) either:

(i) that employer is a large employer in relation to the fund (see subsection (2)); or

(ii) APRA is satisfied that, if authority to offer the class of beneficial interest in the fund as a MySuper product is given, that employer will be a large employer in relation to the fund by the end of the period specified in the authority; and

(c) under the governing rules of the fund, a person is not entitled to hold an interest of that class in the fund unless the person is:

(i) anemployee or a former employee of the large employer; or

(ii) an employee or a former employee of an associate of the large employer; or

(iii) a relative or dependant of anemployee or a former employee mentioned in subparagraph (i) or (ii); and

(d) under the governing rules of the fund:

(i) wherethe large employer or an associate of the large employer contributes to the fund or would, apart from a temporary cessation of contributions, contribute to the fund for an employee of the large employer, any employee of the large employer may hold an interest of that class in the fund; and

(ii) where the large employer or an associate of the large employer contributes to the fund or would, apart from a temporary cessation of contributions, contribute to the fund for an employee of an associate of the large employer, any employee of that associate may hold an interest of that class in the fund.

(2) An employer is a***large employer***in relation to aregulated superannuation fund if there are 500 or more members of the fund who are any of the following:

(a) a member of the fund:

(i) who is an employee of the employer; and

(ii) in relation to whom the employeror an associate of the employer contributes to the fund or would, apart from a temporary cessation of contributions, contribute to the fund;

(b) a member of the fund:
  (i) who is an employee of an associate of the employer; and
  (ii) in relation to whom either the employer or an associate of the employer contributes to the fund or would, apart from a temporary cessation of contributions, contribute to the fund.

29TCCharacteristics of a MySuper product

(1) This section is satisfied in relation to a class of beneficial interest in a regulated superannuation fund if, under the governing rules of the fund:
  (a) a single diversified investment strategy is to be adopted in relation to assets of the fund, to the extent that theyare attributed to that class of beneficial interest in the fund; and
  (b) allmembers who hold a beneficial interest of that class in the fund are entitled to access the same options, benefits and facilities; and
  (c) amounts are attributedto membersin relation to their beneficial interest of that class in the fund in a way that does not stream gains or lossesthat relate to anyassets of the fund toonly some of those members, except to the extent permitted under a lifecycle exception (see subsection (2)); and
  (d) the same process is to be adopted in attributing amounts to members in relation to their beneficial interest of that class in the fund, except to the extent that a different process is necessary to allow for fee subsidisation by employers; and
  (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 such member who is an employee of that employer; and
  (f) the only limitations imposed on the source or kind of contributions made by or on behalf of persons who hold a beneficial interest of that classin the fund are those permitted under subsection (3); and
  (g) a beneficial interest of that class in the fund cannot be replaced with a beneficial interest of another class in the fund, unless the person who holds the interest consents in writing to that replacement no more than 30 days before it occurs; and

(h) a beneficial interest of that class in the fund (the ***old interest***) cannot be replaced with a beneficial interest (the ***new interest***) in another superannuation entity unless:

(ii) the replacement is permitted, or is required, under a law of the Commonwealth; or

(iii) the person who holds the old interest consents in writing to the replacement with the new interest no more than 30 days before it occurs; and

(i) to the extent that assets of the fund are attributed to beneficial interests of that class, a pension is not payable out of those assets by the trustee, or trustees, of the fund on the satisfaction of a condition of release of benefits specified in a standard made under paragraph 31(2)(h) by a person who holds a beneficial interest of that class, unless the payment is derived from a benefitof the kind mentioned in subparagraph 62(1)(b)(ii) provided to the fund by an insurer.

Note: Subparagraph 62(1)(b)(ii) is about benefits payable when a person ceases work due to ill-health.

(2) A ***lifecycle exception*** is a rule under the governing rules of the fund that allows gains and losses from different classes of asset of the fund to be streamed to different subclasses of the members of the fund who hold a MySuper product:

(a) on the basis, and only on the basis, of the age of those members; or

(b) on the basis of the age of those members and other prescribed factors; or

(c) on the basis of the age of those members and other prescribed factorsin prescribed circumstances.

(3) A limitation on the source or kind of contributions made by or on behalf of persons who hold a beneficial interest of a particular class in a regulated superannuation fund is permitted for the purposes of paragraph (1)(f) if:

(a) the limitation is of a prescribed kind; or

(b) the limitation is imposed by or under the general law or another law of the Commonwealth.

29TD Notice of authority

If APRA authorises an RSE licensee to offer a class of beneficial interest in a regulated superannuation fund as a MySuper product, APRA must notify the RSE licensee in writing of the authority.

29TE APRA to give notice of refusal of authority

If APRA refuses an application by an RSE licensee for authority to offer a class of beneficial interest in a regulated superannuation fund as a MySuper product, APRA must take all reasonable steps to ensure that the RSE licensee is given a notice:

(a) informing it of APRA's refusal of the application; and

(b) setting out the reasons for the refusal;

as soon as practicable after refusing the application.

Division 4—Cancelling authority

29U Cancelling authority to offer MySuper product

(1) APRA may, in writing, cancel an authority to offer a class of beneficial interest in a regulated superannuation fund as a MySuper product.

(2) Without limiting subsection (1), APRA may cancel an authority to offer a class of beneficial interest in a regulated superannuation fund as a MySuper product if:

(a) APRA is no longer satisfied that section 29TC is satisfied in relation to that class of beneficial interest in the fund; or

(b) the RSE licensee was authorised to offer that class of beneficial interestin the fund as a MySuper product because section 29TB was satisfied in relation to the class and either:

(i) in a case where that section was satisfied because APRA was satisfied that an employer would be a large employer by the end of a period specified in the authority—the employer was not a large employer at that time; or

(ii) in any case—that section was no longer satisfied in relation to the class on the last day of the immediately preceding year of income; or

(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); or

(e) APRA is no longer satisfied that the RSE licensee is not likely to contravene section 29W or 29WA (whether because of a previous contravention of that section, or for any other reason); or

(f) the fund ceases to be registered under Part 2B; or

(g) either:

(i) in a case where authority was given to offer the class of beneficial interest in the fund as a MySuper product on the basis that the fund would have 5 or more members within a period specified in the authority—the fund does not have 5 or more members at the end of that period; or

(ii) in any case—the fund has ceased to have 5 or more members; or

(h) paragraph 29T(1)(e) is no longer satisfied in relation to the fund (no longer an eligible rollover fund); or

(i) 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.

(3) If APRA cancels an authority to offer a class of beneficial interest in a regulated superannuation fund as a MySuper product it must

take all reasonable steps to ensure that the RSE licensee is given a notice informing the RSE licensee:

(a) that APRA has cancelled the authority; and

(b) of the reasons for the cancellation.

29UA Cancellation of authority of an RSE licensee that is also a financial services licensee

(1) Before cancelling an authority of an RSE licensee that is also a financial services licensee, APRA must consult ASIC if, in APRA's opinion, the cancellation might reasonably be expected to affect the RSE licensee's ability to provide one or more of the financial services (within the meaning of the *Corporations Act 2001*) that the RSE licensee provides.

(2) If APRA cancels the authority of an RSE licensee that is also a financial services licensee, APRA must inform ASIC of the cancellation within one week after the cancellation.

(3) A failure to comply with a requirement of this section does not invalidate the cancellation of an authority to offer a class of beneficial interest in a regulated superannuation fund as a MySuper product.

29UB APRA may allow authority to continue in effect

In a notice that APRA gives to an RSE licensee cancelling an authority, APRA may specify that the authority continues in effect as though the cancellation had not happened for the purposes of:

(a) a specified provision, administered by APRA, of this Act or the regulations; or

(b) a specified provision, administered by APRA, of any other law of the Commonwealth;

in relation to specified matters, a specified period, or both.

Division 5—Fees rules for MySuper products

29V Fees that may be charged in relation to a MySuper product

(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:

(a) an administration fee;
(b) an investment fee;
(c) a buy-sell spread;
(d) a switching fee;
(e) an exit fee;
(f) an activity fee.

(2) An ***administration fee*** is a fee that relates to the administration or operation of the fund and includes costs incurred by the trustee, or the trustees, of the fund (that are not otherwise charged as an investment fee, a buy-sell spread, a switching fee, an exit fee or an activity fee).

(3) An ***investment fee*** is a fee that relates to the investment of the assets of the fund and includes:
(a) fees in payment for the exercise of care and expertise in the investment of those assets (including performance fees); and
(b) costs incurred by the trustee, or the trustees, of the fund (that are not otherwise charged as an administration fee, a buy-sell spread, a switching fee, an exit fee or an activity fee).

(4) A ***buy-sell spread*** is a feeto recover transaction costs incurred by the trustee, or the trustees,in relation to the sale and purchase of assets of the fund.

(5) A ***switching fee*** is a fee to recover the costs of switching all or part of members' interestswithin 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.

(6) An ***exit fee*** is a fee to recover the costs of disposing of all or part of members' interests in the fund.

(7) An***activity fee*** is a feethat relates to 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.

29VA Charging rules

(1) 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.

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.

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.

All MySuper members charged combination of same flat fee and same percentage of account balance

(4) 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 the sum of a fixed amount (the ***flat fee***) and another amount that 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 sum of the flat fee and the same percentage of so much of that member's account balance with the fund that relates to the MySuper product.

All MySuper members to whom action relates charged same flat fee

(5) This rule is satisfied if:

(a) the fee is a buy-sell spread,a switching fee, an exit fee or an activity fee; and

(b) 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 relevant action is taken by the trustee or trustees of the fund; and

(c) the amount of the fee charged is the same for each member to whom it is charged.

All MySuper members to whom action relates charged same percentage of account balance

(6) This rule is satisfied if:

(a) the fee is a buy-sell spread,a switching fee, an exit fee or an activity fee; and

(b) 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 relevant action is taken by the trustee or trustees of the fund; and

(c) the amount of the fee charged in relation to one of those members is a percentage of so much of the member's account balance with the fund:

(i) thatrelates to the MySuper product; and
(ii) in relation to which the relevant action is taken; and

(d) the amount of the fee charged in relation to each of the other of those members is the same percentage of so much of that member's account balance with the fund:
(i) that relates to the MySuper product; and
(ii) in relation to which the relevant action is taken.

All MySupermembers to whom action relates charged combination of same flat fee and same percentage of account balance

(7) This rule is satisfied if:
(a) the fee is a buy-sell spread,a switching fee, an exit fee or an activity fee; and
(b) 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 relevant action is taken by the trustee or trustees of the fund; and
(c) the amount of the fee charged in relation to one of those members is the sum of a fixed amount (the ***flat fee***) and another amount that is a percentage of so much of the member's account balance with the fund:
(i) that relates to the MySuper product; and
(ii) in relation to which the relevant action is taken; and
(d) the amount of the fee charged in relation to each of the other of those members is the sum of the flat fee and the same percentage of so much of that member's account balance with the fund:
(i) that relates to the MySuper product; and
(ii) in relation to which the relevant action is taken.

Administration fee exemption for employees of an employer-sponsor

(8) The fee is an administration fee charged in accordance with the administration fee exemption for employees of an employer-sponsor (see section 29VB).

Note: In some circumstances, the RSE licensee may wish to offer a MySuper product for the employees of a large employeror its

associates (see sections 29T and 29TB). Any fee set for that MySuper product may differ from the equivalent fee set for another MySuper product within the fund. In other circumstances, a separate MySuper product may not be offered, but instead a lower administration fee charged to the employees of a particular employer-sponsor(see section 29VB).

Lifecycle differentiated investment fees

(9) This rule is satisfied if:
  (a) the fee is an investment fee; and
  (b) the fee would satisfy one of the charging rules in subsections (2) to (4) if the rule were applied to an age cohort identified in the governing rules in relation to the MySuper product for the purposes of this subsection, rather than in relation to all members of the fund who hold the MySuper product; and
  (c) the governing rules identify no more than 4 age cohorts in relation to the MySuper product for the purposes of this subsection; and
  (d) the investment fees for the age cohorts reflect a fair and reasonable attribution of the investment costs of the fund between the age cohorts.

29VBAdministration fee exemption for employees of an employer-sponsor

(1) An administration fee charged to members of a regulated superannuation fund who hold a MySuper product is charged in accordance with the ***administration fee exemption for employees of an employer-sponsor*** if:
  (a) the fee is charged in relation to all members of the fund who hold the MySuper product; and
  (b) an employer-sponsor contributes to the fund or would, apart from a temporary cessation of contributions, contribute to the fund for the benefit of one or more members of the fund (the ***employee members***) who hold the MySuper product and who are:
    (i) employees of the employer-sponsor, or an associate of the employer-sponsor; or
    (ii) the relatives or dependants of those employees; and

(c) the trustee, or the trustees, of the fund have entered into an arrangement with the employer-sponsor that secures lower administration fees for the employee members; and

(d) the fee is in accordance with one of the following subsections.

All employees charged same flat fee

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

All employees charged same percentage of account balance

(3) Each of the following is satisfied:

(a) the amount of the administration fee charged in relation to one of the employee members is a percentage of so much of the member's account balance with the fund that relates to the MySuper product;

(b) the amount of the administration fee charged in relation to each of the other employee members is the same percentage of so much of that member's account balance with the fund that relates to the MySuper product.

All employees charged combination of same flat fee and same percentage of account balance

(4) Each of the following is satisfied:

(a) the amount of the administration fee charged in relation to one of the employee members is the sum of a fixed amount (the ***flat fee***) and another amount that is a percentage of so much of the member's account balance with the fund that relates to the MySuper product;

(b) the amount of the administration fee charged in relation to each of the other employee members is the sum of the flat fee and the same percentage of so much of that member's account balance with that fund that relates to the MySuper product.

Division 6—Offences

29W Offering a product as a MySuper product when not authorised to do so

(1) A person commits an offence if:
  (a) the person makes a representation; and
  (b) the representation is that a class of beneficial interest in a regulated superannuation fund is a MySuper product; and
  (c) the RSE licensee for the fund does not have authority to offer a beneficial interest of that class in the fund as a MySuper product.

Penalty: 60 penalty units.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility and Part IA of the *Crimes Act 1914*contains provisions dealing with penalties.

(2) Subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

29WA Contributions in relation to which no electionis made are to be paid into MySuper product

(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 contributionpaid into a specified choice product, or choice products, but no such election has been made in relation to the remainder of the contribution.

(2) The trustee, or trustees, of the fund must treat any contribution to the fund in relation to which no election has been made, and any

part of a contribution to the fund in relation to which no election has been made, as a contribution to be paid into a MySuper product of the fund.

(3) A trustee commits an offence if the trustee contravenes subsection (2). This is an offence of strict liability.

Penalty: 50 penalty units.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility and Part IA of the *Crimes Act 1914*contains provisions dealing with penalties.

Note 2: For strict liability, see section 6.1 of the *Criminal Code.*

Part 2—Application and transitional provisions

10Definitions

In this Part:

SG Act means the *Superannuation Guarantee (Administration) Act 1992*.

SIS Act means the *Superannuation Industry (Supervision) Act 1993*.

11 Authority to offer a MySuper product given before 1 July 2013

If, before 1 July 2013, APRA authorises an RSE licensee to offer a class of beneficial interest in a regulated superannuation fund as a MySuper product, that authority takes effect on 1 July 2013.

12 Applications for authority to offer a MySuper product for a large employer

(1) This item applies if:

(a) an RSE licensee makes an application to APRA before 1 July 2013 under section 29S of the SIS Actfor authority to offer a class of beneficial interest in a regulated superannuation fund as a MySuper product; and

(b) the application is made on the basis that the class of interest is one in relation to which section 29TB of the SIS Act is satisfied.

(2) Section 29SB of the SIS Act(period for considering the application) applies as if:

(a) the application were received on 1 July 2013; and

(b) the references in paragraphs (1)(a) and (b) of that section to “60 days” were instead references to “120 days”.

(3) Section 29WA of the SIS Act(contributions in relation to which no election made) does not apply in relation to a contribution if:

(a) the contribution is made during the period in which APRA decides the application (see section 29SB of the SIS Act); and

(b) the contribution is paid into the class of beneficial interest to which the application relates.

(4) On and after 1 January 2014, a contribution to the fund is taken to satisfy paragraph32C(2)(c) of the SG Act (employer's superannuation guarantee obligation) if the contribution is made during the period in which APRA decides the application (see section 29SB of the SIS Act).

(5) If APRA refuses the application, then:

(a) a contribution to the fund made on or after 1 January 2014 is taken to satisfy paragraph 32C(2)(c) of the SG Act,provided it is made before the end of thegrace period; and

(b) section 29WA of the SIS Act does not apply in relation to a contribution to the fund made on or after 1 January 2014, provided it is paid into the class of beneficial interest to which the application relatesbefore the end of the grace period.

(6) For the purposes of subitem (5), the ***grace period***is a period of 3 months beginning on the day on which APRA refuses the application.

13Contributions in relation to which no election made

Section 29WA of the SIS Act applies to contributions made to a regulated superannuation fund on or after 1 January 2014.

[*Minister's second reading speech made in—*
House of Representatives on 3 November 2011
Senate on 10 September 2012]