Submission and comments to The Treasury Discussion Paper- *"Better regulation and governance, enhanced transparency and improved competition in superannuation"*

I welcome the opportunity to provide feedback and comments on particular aspects of the measures proposed in the Discussion paper issued on 28 November 2013.

Executive Summary –

- The governance of Superannuation Trustees should be based on a framework of regulatory guidance that reflects a regime that is sympathetic to the Banking and Insurance sectors regulated by APRA
- The nexus between equal representation and governance of the Superannuation Fund is not as compelling as when Superannuation first commenced;
- Developments in the level of transparency and information available to members removes the requirement for equal representation and increases the benefits that truly independent directors will deliver
- The scale of the funds under administration should result in the regulatory intent to raise the governance standards associated with the operation of a Superannuation scheme
- There is every reason to determine that the level of independence of decision makers MUST be aligned with the Banking and Insurance sectors
- The test of independence extends to being independent of stakeholders and independent of thought
- The Chair MUST be independent
- The Directors and the Board MUST be subject to regular performance review visible to the members
- Terms of appointment should have a connection to the Directors independence – after serving a certain period the independence of the Director is lost
- The governance thresholds applicable to Superannuation funds should have greater alignment with the ASX Corporate Governance Principles –this will permit adjustments to be made based on the scale of the Superannuation Fund
- The number of Board members –and by association the number of independent directors - should align with the scale of the Fund by scheme assets and membership base;
- Implementation of any proposal should occur as a matter of priority
- There is a need to review the risk management practices in the funds management sector to better align with Superannuation requirements

Background –

Throughout my professional career I have had a particular interest in the function and efficiency of Superannuation products. This interest stemmed initially from watching my own parents – as part of the first wave of baby boomers – struggle with the concept of superannuation and what was an acceptable amount of superannuation savings. But well before this practical life event I had focussed throughout my legal career on developing a deep understanding of the scope and form of fiduciary accountabilities that regulate the operation of beneficial trusts – in all their forms. Not surprisingly Superannuation became a focus as the question of fiduciary accountability is foremost in the structural framework under which a Superannuation scheme functions.

In 1996 I was appointed as the State Manager (Qld) Corporate for Perpetual Trustees Australia – this was somewhat of a holy grail as I had the opportunity to put into commercial practice roughly 10 years of developed technical experience on fiduciary theory.

In 1999 I began a 10 year stint at Suncorp Metway Wealth Management where I was responsible for the creation of the Responsible Entity regime within the asset management business, the development of a dedicated Trustee Services unit servicing the Suncorp Superannuation entities and the creation and implementation of a Department wide governance/risk management/compliance framework focussed on ensuring that the Directors of the entities associated with managing other peoples' money were fully engaged in delivering the highest of governance standards – sometimes in contradiction to the preferred business outcomes. I also participated as liaison/manager for all APRA issues for all Wealth Management products captured under the APRA mandate – which included Superannuation products.

During the last 5 years at Suncorp I was an executive director of the 2 Superannuation entities – being the Trustee of a public offer fund and an internal corporate employee scheme. This time period coincided with the implementation of the Registerable Superannuation Entity regulatory regime.

Since 2008 I have operated Governance Worx Pty Ltd - a specialist governance and risk management consulting firm – and acted as a consultant to organisations that function within a heavily regulated environment. This focus has logically included superannuation funds, funds management organisations, financial planning businesses and private equity houses. During 2012/2013 I was engaged in assisting a number of industry funds to develop governance/risk management/compliance (GRC) frameworks for a MySuper default product as well as the hallmarks necessary to meet the various regulatory obligations imposed under the Stronger Super prudential standards. During this period I observed first hand the weaknesses in the governance and fiduciary environments within which a portion of the market operates.

These observations were the catalyst for authoring several papers/articles that were published in the Superfunds magazine issued by the Australian Superannuation Funds Association (ASFA) and sought to highlight some of the lesser understood governance and/or risk management issues that I considered stemmed from the implementation of Stronger Super and seemed to be prevalent in the Superannuation sector.

I sit as a non-executive director on several corporate entities and have a more than passing understanding of appropriate corporate governance standards and the tenets of the ASX Listing Rules and ASX Corporate Governance Principles.

Note: the views and opinions expressed in this submission are my personal observations and are not in any way to be considered as an opinion on the governance status or standing of any organisation/participant in the Superannuation sector or the broader financial services marketplace.

Feedback and Commentary –

Baseline for the Industry – “That’s the way we’ve always done it”

The genesis of the Superannuation industry flowed from the Government driven public policy initiative to facilitate some form of collective savings to be utilised towards funding peoples retirement and to reduce the reliance on Government funded pensions.

At that point in time in 1992 the predominant engagement on issues of superannuation had involved the union movement through their involvement in the creation of the various industrial awards that were in place across industry sectors then operating within/across Australia. Fast forward 22 years and the pool of Superannuation ‘savings’ has grown exponentially, the vast majority of the population has some degree of awareness that superannuation exists as well as the rationale behind the concept and the methods by which the superannuation guarantee contribution is calculated and paid have substantially less connection to industrial awards. In other words the superannuation contributions and the resultant superannuation pool have much less of a connection to connotations of employer or employee than when superannuation was embedded in Australian public policy.

In that same 22 year period there have been fundamental shifts in the global marketplace, numerous challenges and some spectacular failures that have changed the financial services landscape and raised the bar on issues of governance, risk management and effective compliance.

It is within this landscape that the Directors as the superannuation decision makers – charged with protecting and growing the superannuation savings pool – now need to operate. The awareness of the risks associated with doing business, the constant drive to find economies of scale that relate to savings for members, the heightened competition for retention of existing members and attracting new members and the incessant background noise on what is considered to be best practice across the entire spectrum of activity that the Superannuation vehicle participates in must surely be frightening any sensible risk aware director of a Superannuation Trustee entity. There are a large number of individuals who –for whatever reason or rationale – sit as Directors and ‘represent’ a certain stakeholder

Stakeholder anomalies –

The White Paper contemplates that Superannuation fund governance should be aligned to the corporate governance arrangements currently operating within/across ASX listed entities and APRA regulated Banks and Insurers.

There are two (2) fundamental differences that this proposal overlooks in relation to the governance of Superannuation Funds –

1. Corporate Governance – ASX listed companies largely operate as 'Limited' corporations where the public is able to acquire and trade shares. By it's very nature a listed public company has a broad range of stakeholders who have a direct interest in the manner by which the company is managed and the financial performance which translates to the return on their investment. There is also an active monitoring and public commentary on the actions of the public board by independent external commentators – for example market analysts and the Australian Shareholders Association –which does not occur in the broader Superannuation sector.

   Super fund trustees are a mix of public unlisted corporations and Proprietary Limited (unlisted) corporations. The shareholding in the company will have historic connection to the gensis of the scheme but may not always be transparent and might have no obvious alignment with the interests of the Fund members. This historic structural conundrum has the potential to create issues of conflict when the board composition moves to a greater level of independent directors – the directors desire will be to act in a manner that benefits the fiduciary duty they hold in favour of the members but the Directors also have a duty to the 'direct' stakeholders as the owners of the shares in the Trustee company. There is a real chance that the interests of member and stakeholder may not align!

2. Nature of the stakeholders interest - There is a substantive difference in the nature of the interest of a shareholder in an ASX listed entity (which for the purpose of this discussion will largely include the APRA regulated Banks and Insurers as they are predominantly ASX listed) and a stakeholder in a Superannuation scheme. Shareholders own a direct contractual financial interest in an ASX company and have the ability to forceably direct the company to perform certain actions/activities which can include the removal of Directors.

   Conversely super fund members hold a contingent beneficial interest – under equitable principles – in the assets of the scheme. Their beneficial interest has a limited entitlement to direct that certain activities occur and there is no practical power they hold (as individuals or as a collective) to seek to influence the management of the Fund or the governance processes that are being utilised by the Trustee entity – and there is no power to remove Directors.

   Governance Worx perspective –

   As a consequence of the lack of vested control Superannuants should be entitled to a heightened level of transparency of how the Trustee functions, the high level details of the rationale behind certain decisions and specifically the degree of investment that all the

Directors have in ensuring that the highest of governance standards are adopted in the protection of their superannuation investment.

It is our contention that the highest level of existing prudential standards found within the Australian financial services sector should be applied to the management of the increasing pool of retirement savings –in the instance proposed by the White paper-this equates to the prudential standards applicable to Banks and Insurance corporations. Further the operating environment should be flavoured in a fashion that enables the sector participants to adjust the operation of the required prudential and governance standards in a fashion that more appropriately befits the scale of the operation and these principles are to be found within the ASX Corporate Governance Principles.

Alignment of the Participants in the Financial Services Sector

In light of the fact that the quantum of the Superannuation pool continues to close in on the total level of assets held within the Banking sector the degree of regulatory oversight should also be aligning. So I see no logical rationale as to why the regulatory prudential thresholds that are currently required of the Banking sector should not be equally applicable to the Superannuation sector.

This extends to also cover the dichotomy that has been created between the risk focussed obligations required from the Board of an Authorised Deposit-Taking Institution or Insurer- as they exist today and as proposed under Prudential Standards CPS 220 and CPS 510 (due to take effect from 1 January 2015).

From a policy perspective there will be certain tenets of the APRA imposed regulatory requirements that apply to an ADI/Insurer that will not have logical application to a Superannuation scheme – but surely alignment of the regulatory frameworks will in the long term deliver greater public benefit through the application of consistent oversight principles.

Focus Question 2 -

What is the most appropriate definition of independence for directors in the context of Superannuation boards?

The question of 'independence' needs to be addressed from several perspectives –

1. Independent from the stakeholders involved with the particular scheme ; and
2. Independent of thought about the issues that will be encountered by the corporation

Independent of stakeholders –

The existing Superannuation test of 'independence' is seriously out of alignment with current governance expectations. However, the historic nexus between the employer, employee and the protection of the member/employees long term retirement savings should not be lost in the

discussion about the most effective (and protective) means of resolving the process of decision making.

But in any discussion of fiduciary governance the underlying theme will always be – the outcome is to be in the best interests of the beneficiaries. The current equal representation model actually promotes that there should be a 'representative' of the employer and employee sitting at the Board table – by the very nature of this 'label' there is almost an expectation that the employer/member appointee will make sure decision making is aligned with the interests of their representative group.

We have enormous support for the definitional aspects of independence found in both the APRA Standards and the ASX CGC Principles - noting with great interest that the definition of independent proposed by draft Prudential Standard CPS 510 is very much aligned with the ASX definition. So as will be the constant theme throughout this submission –why create a different environment when APRA is already moving down the path to imposing tests of independence in the Bank and Insurer sectors which are supported by the framework within which listed companies operate.

Independent of thought -

Given that APRA has already established the mechanics for the selection and appointment of independent Directors of an APRA regulated entity –CPS 510 – and that APRA is accountable for the regulation of Superannuation entities why create additional layers of regulation? There may be some tinkering necessary to fully align the regulatory statements within CPS 510 with the existing SPS 510 –but if there is a desire to avoid unnecessary cost structures surely this must also be addressed from the perspective of the consistency of the regulatory landscape that APRA is required to oversee.

The threshold tests of independence will logically result in a greater percentage of individuals sitting around the Board table having a higher degree of awareness of the expectations and duties of a non-executive director. A further benefit of a greater presence of truly independent directors will be that the individuals are likely to have a background in other fields of enterprise resulting in a different perspective on issues of governance, risk management and compliance being brought to the table – resulting in less opportunity for collective thinking to take hold.

The currently draft ASX CGC Principles revisions propose that a Director loses their independence upon effluxion of a period of time (refer to Focus Question 8 for further commentary). Whilst there is some sympathy for the view that directors can continue to provide valuable counsel regardless of a fixed period of time expiring the issue of Board succession becomes a much greater priority for the Board and particularly the Chair. So if there is a minimum level of independent directors required to meet prudential principles/guidance there is logically a continual watch on meeting the independent threshold –which leads to an ongoing focus on succession.

Focus Question 3 –

Proportion of independent directors for Superannuation Boards

In keeping with the theme that there is already a plethora of guidance on what has become accepted as appropriate principles of good corporate governance ,to permit the Superannuation sector to remain out of kilter with these accepted standards does not make any sense.

Our firm belief is that the application of prudential standards should be consistent across the Banking, Insurance and Superannuation sectors. We further consider that there is a regulatory chasm that has arisen when looking at the regulatory/compliance/governance requirements within the funds management sector –this will be addressed under a separate heading below. But to have any position that facilitates a different standard of governance between the Bank/Insurer and Superannuation participants results in :-

- Additional regulatory oversight from APRA to manage disparate prudential thresholds;
- Inconsistency in the level of prudential protection that is imposed on the primary capital pools within the Australian economy .

We fully support the concept that any Board charged with Trusteeship of a Superannuation scheme should have a majority of independent directors on the basis that :-

- The requirements of the Banking and Insurance prudential standards require a majority of independent directors and an independent Chair;
- The obligations attaching to the ASX Corporate Governance Guidelines-both the current Guidelines and the changes proposed by the ASX Corporate Governance Council – require entities to have a majority of independent directors

We also believe that the issue of functional operation of the Board and it's approach to corporate governance should align with the scale and substance of the Superannuation scheme. The participants in the Superannuation industry range from monoliths that have enormous scale by value of funds held and number of members through to small corporate schemes created as part of a small employers desire to provide additional benefits to employees.

As is the case with the method of application of the ASX CGC there is a modicum of flexibility permitted on the means by which the corporate governance principles are applied and each enterprise has the ability to determine the degree to which a certain CGC Principle will apply to it's operational corporate governance. The challenge for the enterprise is to deliver an acceptable explanation as to why the Principle has not been met – with the test of acceptability resting with the stakeholder.

We observed from the Foreword to the ASX CGC Principles written by Eric Mayne that "Good corporate governance practice is not restricted to adopting Council's Recommendations. The arrangements of many entities differ from the Recommendations but amount equally to good practice. What matters is disclosing those arrangements and explaining governance practices considered appropriate to an individual company's circumstance."

Size of Superannuation Boards is also an issue that may require some focus –

Whilst the move to a majority of independent directors is a logical move there are a number of practical impacts that some superannuation boards will need to address. There are instances in the market where the Board composition totals as many as 12 directors - where the majority are employer and employee representatives (plus additional alternate directors). Now a Board of this size has limited effectiveness and a move to a majority of independent directors will logically result in a reduction of the total board size – with the reduction being driven by both board effectiveness as well as the cost of engaging independent directors.

Whilst we do not consider that there should be a mandated maximum number of Directors required on a Board we do consider that consideration should be given to guidance being provided to align the operation of the corporate governance with the operation of the ASX CGC on issues of board composition and corporate governance.

Focus Question 4 –

Independence of Chair

It is our considered view that the Chairman MUST be independent. The foundation for this view is to seek alignment with the requirements upon other APRA regulated entities and the obligations imposed on ASX corporations.

The practical outcome of such a position is that the selection process for a Chair will in the majority of cases lead to the most experienced and senior independent director being appointed to the role of Chair. In light of other recommendations we make in this submission the performance management and succession planning associated with the Board will lead to a regular rotation of the role of Chair- in any event at least every 7 years.

Focus Question 5 –

Process of appointment of independent directors

The current approach to appointment of Directors has always puzzled us – if a Director is appointed as a representative of a particular interest group (for example an employer director) there is a perception that the individual is acting in support of the interests of that beneficiary group. The Board rarely seems to have any formal involvement in the physical process of appointment and there does not always appear to be any connection between the interests of the shareholder and the appointment of the Director.

Once an individual director joins a Board he/she is required to discharge their directorial duties in alignment with the interests of ALL members – so in reality the representative aspect of the means by which Directors are currently selected and 'approved' seems to be out of kilter with any sensible and appropriate process of corporate governance.

Selection process – the future

To immediately move away from the existing representative director approach will not be embraced by the Industry Fund movement nor by the larger Corporate schemes. But there is an existing mechanical means of selecting and electing Directors found within the Mutual sector. Credit Unions largely draw potential new directors from their membership base, the background of these potential directors is assessed against the APRA 'fit and proper' test and then the members vote on their preferred candidate. A similar program of nomination and election is also found in a variety of Corporate Funds where the member nominees are being sought.

In an effort to maintain a semblance that the member base has some role in the selection and approval of the independent directors a protocol of this style would at least facilitate the member or employer groups providing input on who they may determine was an acceptable independent director.

Appointment by the Board

Whilst every Trustee will have a unique methodology of operating their existing corporate governance requirements the appointment of a Director of the Board should be effected by a formal resolution by the Board. We have seen many examples where the appointment of a Director is confirmed following a 'recommendation' from either an employee or employer group. This formal process will be of even greater significance as the move to a greater level of independent Trustees occurs and will reinforce that the Director is a member of the Board first and foremost.

Focus Question 6 –

Alignment of all Board appointments

All Board appointments must be effected by the Board – the existing variety of methods for appointing Directors (regardless of whether they are nominated by interest groups or stakeholders) is not in accordance with generally accepted corporate governance principles that dictate appointments are made by the Board – regardless of how the Director was proferred as an acceptable candidate.

Existing ASX CGC principles require that potential Directors are assessed by a Nominations Committee (a similar approach exists in the appointment of member nominated Directors of Credit Unions) – which is responsible for the assessment of the Directors skillset/experience/fitness and independence. We consider that this process of reviewing nominees is widely accepted and should also be utilised to address the relevant tenets of any director to be appointed to a Superannuation Trustee board.

Focus Question 7 –

Strengthening conflict of interest regime

Conflicts of interest are embedded in the manner by which the existing representation methodology is used to create a Superannuation trustee board. Once the model has been altered to a greater level of independent Board members there will be fewer instances of conflict.

Conflicts of interest are prevalent throughout the financial services environment and regardless of the final outcome sought by this White paper –conflicts will remain a probability. There is a great deal of existing direction in the financial services landscape on what is considered to be a conflict and the mantra is that it is more about the management of an existing or perceived conflict than seeking to avoid the conflict outright.

Given that the conflict management overlay imposed by SPS 521 has only been in operation since 1 July 2013 we would suggest that the prospect of a decreasing likelihood and that Superannuation Trustees are still fine tuning conflict of interest protocols could warrant deferring any additional guidance on conflict of interest management until a later date.

Focus Question 8-

Maximum appointment terms for Directors

The term of appointment of a Director – in the sense that a serving director is required to step down after having served a nominated term - is not something that should be mandated. Many long serving directors hold a huge amount of corporate memory of the organisation and the loss of corporate memory creates greater risk to the Trustee than the perception that a long serving director might no longer be termed 'independent'.

I do agree that there can sometimes be signs of 'group thinking' and complacency when there is no program of Board renewal aligned with a rigorous Board performance review program of the individual directors and the Board as a collective decision making entity.

So the issue of terms of appointment would more logically be aligned with a trigger such as the performance of a director. This theme is along the same (or similar) lines as the proposed concept in the Consultation Paper issued 16 August 2013 by the ASX Corporate Governance Council –wherein the (proposed) Box 2.1 seeks to remove a directors independence when they have been a sitting director for a continuous period of 9 years. The results of the consultation have not yet been revealed but the underlying theme of loss of independence through the effluxion of time has already been implemented in the United Kingdom, South Africa, Hong Kong and Singapore.

The relevance and application of a maximum term and it's connection to independence will be impacted by the final determination on the degree of independent directors that will be regulated following consultation. I am not a proponent of a mandated retirement after a prescribed period however, I am strongly in support of a heightened focus on the performance and the degree of independence of a sitting director after a prescribed period.

The question of independence and composition of a Superannuation board (which will include Board renewal and succession) is a matter for the Board as a whole and the Chairman as facilitator – with or without external support. So my recommendation would be that after a continuous period of service of 7 years that the Superannuation entity board is required to annually assess the performance of the director,including the voracity of the contribution of any director that has been a sitting director beyond the 7 year period.

Following this annual assessment the Trustee is required to notify APRA of the outcome of the annual review of the performance and independence of sitting directors with greater than 7 years of tenure. This notification can be either in the form of a notification lodged with APRA and/or contained as a distinct item within the governance statement within the annual report to members.

Focus Question 9 –

Performance appraisal of Directors performance

Following on from the theme in Focus Question 8 - the directors and the collective Board MUST be exposed to regular and detailed performance assessment. The concept of assessment dictates that there is a benchmark against which the performance is measured. The nature of the benchmark or key performance indicators against which a director/Board is assessed will differ for every Superannuation Trustee –after all no two funds had the same genesis, have the precisely identical membership base and will have been developed under unique management.

Rather than deliver prescriptive guidance on what is expected in a Board review guidance should be aligned with the approach taken in ASX CGC Recommendation 2.5 which identifies a variety of focal points for ongoing assessment/review of Board and corporate activities.

Focus Question 10 –

Most suitable means of implementing governance changes

As we have promoted continuously throughout this submission the template for the creation of an improved level of independent thinking on a Superannuation Board is already contained within Prudential Guidance within the Banking/Insurance sectors. Obviously, these Prudential Standards are not in operation within the Superannuation sector but the underlying theme has already been created.

Further, the template for the practical operationalisation of the Standards is contained within the ASX CGC Principles –both the current Principles and the recently issued draft Principles- adopt a principle style approach that permits a degree of tailoring of the Principles to align with the organisations scale and structure. The principle being to require a rationale to be disclosed as to why the Principle is not being met.

The regulatory and compliance costs would be largely industry specific and will logically differ depending upon the style of the corporate structure utilised to operate the Fund. Retail funds that sit within a Bank or Insurance conglomerate are likely to already have some of the hallmarks of the CPS Prudential Standards in operation given the Fund sits within an APRA regulated ADI.

Industry Funds will no doubt have the largest workload to re-align the corporate governance approach they currently follow. Aspects of the process of selection, assessment and election of independent directors is predicated on a different mindset to that currently in place. There are a number of participants that have begun to alter the composition of their existing Board to incorporate a higher degree of independent thinking as part of an improved approach to governance.

Corporate funds will be similarly placed to the Industry Funds as the protocol for selection and appointment of a director is aligned with the interests of the members/employer. However, as the bulk of the corporate schemes are representative of a large employer there is a high likelihood that the employer is an ASX listed entity and fully conversant with the requirements of delivering compliance with the ASX CGC Principles.

There will be an increased compliance requirement to meet the regulatory change that will create an additional layer of cost. However, the larger participants in the Superannuation sector already have substantial compliance headcounts and whilst the proposed changes will be more than a business as usual outcome the additional costs will be manageable. But there is the possibility that the potential additional costs may cause greater impact on the small to medium Superannuation schemes creating greater incentives to investigate alternative future arrangements which will no doubt include merger activity to achieve scale synergies.

Focus Questions 11 & 12

Implementation and Transitional Timeframes

The proposed changes may on the surface appear as a major piece of implementation work however the focal point of the proposed changes is specifically restricted to the manner by which the Trustee operates and are largely contained within the Board charter and related governance documents. The changes required will not be anywhere as fundamental or substantive as the recent implementation of Stronger Super.

Once mandated by appropriate Guidance/Standard/Principle the changes necessary should be capable of development and implementation within 6 months.

There will be any manner of appointment arrangements for existing appointees to a Superannuation Fund Board but the bulk of these appointments are unlikely to have either an open ended timeline or fixed term. The Board charter/constitution will regulate the tenure of Directors but in the main we would expect that there is an ability to move to alter the Board composition in short order. So whilst there may need to be a grandfathering of some appointments the fact that the proposal is for a majority of independents should not create major implementation challenges.

Observations and Anomalies – a Regulatory Chasm

The White paper observes that the level and degree of independence around the Board tables of ASX listed entities and APRA regulated Banks and Insurers should be utilised as a possible benchmark for the determination of what is better practice for Superannuation Trustees. However, there is an underlying weakness in the required standards of governance and risk management protocols – that whilst unrelated to the discussion around the level of independence of Directors –remains as an unresolved weakness in the better governance of entities across the financial services sector and specifically within Superannuation Funds (and by association funds management operations).

- Banks and Insurers have long been required by CPS 220 and CPS 510 to have in place risk management focussed programs aimed at generating a heightened focus by Boards on the 'cultural' execution of risk and governance initiatives. The existing standards will be revamped from 1 January 2015 to specifically address the generation of 'risk governance' and 'risk culture' as an integral part of the organisations governance framework.
- As a consequence of the Stronger Super Prudential Standards and in particular in line with SPS 220 Super Funds were obligated to generate an environment that reflected a cultural execution of risk management issues from 1 July 2013
- Fund management enterprises that are regulated within the Australian jurisdiction by the Australian Securities and Investments Commission (ASIC) have no regulatory guidance to follow (or standards to meet) on the question of management of risk or governance execution. Offshore fund managers regulatory regimes vary markedly as does the level of governance and risk management focus that is required as a minimum operating standard.

So from a practical perspective Superannuation entities that operate within the umbrella of an APRA regulated Bank or Insurance enterprise have by association a higher standard of governance and risk management protocols that cover the management of the Superannuation scheme. There is no regulatory demand that this is a requirement but conglomerate Banking and Insurance organisations (certainly from my experiences) establish the required hurdle standards as the highest level of standards that operate across the organisation – that is the governance and risk management tenets of CPS 220 and CPS 510.

From 1 July 2013 Superannuation Trustees were required to have a minimum standard of risk management in line with SPS 220 – logically non-aligned Funds which are predominantly the Industry Super schemes and Corporate schemes. However, the required standard under SPS 220 does not extend to the same degree of explicit cultural execution as CPS 220. There is no question that the July 2013 Standards were targetted at seeking a heightened understanding by the Board and executive management of the management of risk and the role it plays in governance of the Scheme and the Scheme assets.

However, within the funds management sector there is little formal regulatory guidance on the application of risk management practices considered necessary by ASIC. Apart from some rudimentary requirements in Regulatory Guide 104 indicating that a risk framework is required as part of operating an Australian Financial Service Licence Responsible Entities are not faced with delivering high levels of best practice risk management.

Obviously the issue of risk management has greater application within a prudential framework but when it is considered that the bulk of the assets ‘owned’ by Superannuation Funds are invested in funds management vehicles the assets are being invested in a market sector that carries a higher risk profile primarily due to the fact that the mandated risk management practices of a fund manager have a lower minimum required standard.

The fact that there is 3 differing required levels of risk management across the Australian financial services sector creates a concern that the weakest link/lowest mandated standard in the investment cycle manages the majority of the funds circulating within the financial system.