



AUSTRALIAN INSTITUTE of
SUPERANNUATION TRUSTEES

Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No.1) Bill 2017

29 September 2017

AIST Submission to Senate Economics Legislation Committee



Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No.1) Bill 2017

AIST

The Australian Institute of Superannuation Trustees is a national not-for-profit organisation whose membership consists of the trustee directors and staff of industry, corporate and public-sector funds.

As the principal advocate and peak representative body for the \$700 billion profit-to-members superannuation sector, AIST plays a key role in policy development and is a leading provider of research.

AIST provides professional training and support for trustees and fund staff to help them meet the challenges of managing superannuation funds and advancing the interests of their fund members. Each year, AIST hosts the Conference of Major Superannuation Funds (CMSF), in addition to numerous other industry conferences and events.

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Executive summary

AIST submits that the *Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No.1) Bill 2017* requires extensive amendments before the various measures in it are able to lift standards and accountability across the superannuation industry, and for them to be properly focussed on maximising retirement outcomes for Australian superannuation funds members.

Insufficient attention has also been paid to the most efficient way of progressing these measures and the overall impact of these measures would be to increase the regulatory burden on super funds.

AIST provides the following recommendations in relation to this Bill:

Members' best interests served by two-tiered outcomes assessment: AIST supports measures that strengthen the obligation on superannuation trustees to consider the appropriateness of their MySuper product offerings, provided this assessment does not reduce the existing legislative focus on the pursuit of optimal net returns. We support a two-tiered outcomes assessment with a primary annual MySuper outcomes assessment based on net returns and a secondary annual MySuper outcomes assessments having regard to the factors identified in the draft Bill, provided the pursuit of these are not in conflict with the pursuit of net returns. The Bill should be amended to reflect the proposed two-tiered assessment process outlined in this submission.

Extend outcomes assessment to Choice: We agree that MySuper products should be held to the highest standards of accountability and transparency and believe this standard should apply equally across to Choice products which, in most cases, under perform.

Criteria need to be tightened: We oppose the factors for the annual MySuper outcomes assessment being open-ended.

Authority to offer a MySuper product: We support the measures to provide APRA with enhanced capacity to refuse or cancel a MySuper authorisation, subject to the financial interests of members being primarily defined as the promotion of optimal long term net returns.

Director penalties should extend to Choice: We support the expansion of the director penalty regime and believe it is important to that directors of superannuation funds offering Choice products are held to the same high standard.

Approval to own or control an RSE licensee: We support APRA's power to approve owners and controllers of RSE licensees but it must be exercised appropriately and be reviewable.



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Review of existing APRA powers before expansion: In principle we do not oppose the expansion of APRA's powers and if they are deemed appropriate they should be exercised judiciously. Notwithstanding this, we believe that the regulatory framework should not be extended at the *expense* of considering the existing regulatory framework and how the existing powers could be used to address the perceived concerns. We call for an in-depth review into APRA's current regulatory tool-box as it is appropriate to consider how the existing framework can be improved in ways other than through broad expansion. Our second caveat lies with our concerns that the threshold to trigger APRA's direction powers is low and the directions APRA can issue are broad and open-ended.

Portfolio holdings disclosure: AIST generally supports legislation for RSE licensees to make their portfolio holdings publicly available. We supported these measures during the Super System Review and in relation to the subsequent *Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Bill 2012*, and we maintain this support notwithstanding these measures having been in limbo for the past five years.

Flexibility on Annual Members' Meetings: We reiterate our support for the requirement to hold Annual Members' Meetings, however the Bill is too prescriptive and this risks stifling innovation. We submit that funds need flexibility to choose the most appropriate engagement strategy with their members.

More consultation on reporting standards: We are generally supportive of the proposed amendments to reporting requirements but submit more consultation is needed to address a number of issues. This is especially important given that the Bill, if implemented, would give APRA unprecedented data collection powers.



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Introduction

The Australian Institute of Superannuation Trustees (AIST) welcomes the opportunity to comment on the *Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No.1) Bill 2017*. Although this inquiry also includes the *Superannuation Laws Amendment (Strengthening Trustee Arrangements) Bill 2017*, we will provide comments in relation to that bill in a separate submission.

On 14 September 2017 the Government introduced four Bills that, if passed, will have a significant impact on the superannuation system. This submission relates to the measures in the *Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No.1) Bill 2017*. Our views on each of the other Bills are contained in separate submissions.

We broadly welcome the Government's stated objective in this Bill which is to 'Modernise and increase confidence within the superannuation system'¹. Some of the measures in the Bill do fulfil the stated objective. However this submission seeks to make a number of important suggestions that would improve and further strengthen Australia's superannuation system.

AIST recommends various amendments to, and a review of, various measures. Alignment of some measures with maximising retirement outcomes of super fund members needs to be improved, and more attention should have been given to reducing the adverse efficiency impact of implementing these measures.

The Bill contains eight separate measures that seek to modernise and increase confidence within the system and broadly relate to the following:

- Annual MySuper outcomes assessment.
- Authority to offer a MySuper product.
- Director penalties.
- Approval to own or control a registrable superannuation entity (RSE) licensee.
- Australian Prudential Regulation Authority (APRA) directions powers.
- Portfolio holdings disclosure.
- Annual members' meetings.
- Reporting standards.

¹ Explanatory Memorandum (EM), page 9, para 1.1.



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Annual MySuper outcomes assessment

This measure seeks to:

Strengthen the obligation on superannuation trustees to consider the appropriateness of their MySuper product offering annually including how that product continues to deliver appropriate outcomes to MySuper members.²

While AIST supports the objective of an annual outcomes assessment we have a number of concerns.

Net returns must be the primary focus

Our support for the outcomes assessment is conditional on it not reducing the existing legislative focus on the pursuit of optimal net returns. In assessing the appropriateness of product offerings, it is the best interest of members that net returns have primacy of focus. Superannuation is a long-term investment and what members receive at retirement is determined by net returns over the preceding investment period.

Reducing the primacy of net returns is at odds with the objective of MySuper.

In the short covering letter from the Super System Review, the review panel stated that MySuper sat at the heart of their recommendations:

It is designed to focus funds on the core purpose for which they exist: optimising retirement incomes for members.³

Section 29VN of the *Superannuation Industry (Supervision) Act 1993* (SIS Act) sets out additional obligations of a trustee in relation to a MySuper product. Subsection 29 VN(a) requires a trustee to:

...promote the financial interests of the beneficiaries of the fund who hold the MySuper product, in particular returns to those beneficiaries (after the deduction of fees, costs and taxes).

This requirement is not qualified by the proposed subsection 29VN(2). Rather, the sub-section requires trustees to undertake an annual comparison with other funds that offer a MySuper product, having regard to scale of members and scale of assets.

² EM, page 18, para 2.1

³ Cooper, J., Grant, S., Wilson, B., Casey, K., Gruen, D., Martin, I. and Heffron, M. (2010). *Super System Review Final Report*. Review into the Governance, Efficiency, Structure and Operation of Australia's Superannuation System (Cooper Review). [online] Canberra: Commonwealth of Australia. Available at: <http://tinyurl.com/ybkdywao> [Accessed 27 Sep. 2017].



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The Bill adds new requirements for trustees (new subsections 29VN(2)(3) and (4)) which define the factors to be taken into account by trustees in determining the financial interests of MySuper members, and reinserts the scale comparison.

While returns are identified as a factor (proposed new subsection 29 VN(3)(c)), they would be one factor in a list of many factors. The consequence of these changes is that the current clear legislative requirement to pursue optimal net returns is diluted and diminished.

AIST strongly supports a clear and unclouded legislative requirement for trustees to pursue net returns for MySuper members, and opposes any legislative prescription that reduces this requirement.

AIST supports a requirement for trustees to undertake an annual comparison of long-term net returns with other funds that offer a MySuper product, but does not insist that this be on the basis of a scale test.

AIST supports a legislated requirement to compare long-term returns as the primary obligation of a trustee in relation to a MySuper product, and for this to be after the deduction of fees, costs and taxes. While more work is needed, AIST notes and supports the objective of Regulatory Guide 97 (RG 97), which is intended to ensure that fees and costs associated with deriving net returns are captured.

AIST does not oppose a legislated requirement for trustees to consider other factors, and for these to be the factors listed in the draft Bill. However, the construction of the Bill should be amended so that the pursuit of these are not in conflict with the pursuit of net returns.

Two-tiered approach

This two-level approach would maintain the focus on net returns while also allowing a more fulsome assessment of MySuper products to take place. This would assist trustees to concentrate on the overall health of their MySuper products while not reducing the primary focus on net returns.

The multi-factor approach also risks increasing complexity, lack of clarity and reduction of easy comprehension. If, however, the multi-factor is overlaid by a paramount requirement to pursue net returns, this becomes much simpler to both understand and assess as a consumer.

A consumer would therefore be able to get the answer to two questions: “What returns has my fund delivered and how does this compare to other funds?” and, “What options, benefits and facilities are offered by my fund; are they what I need; and do they offer value?”



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The separation of the two questions is very important. It is likely that many members of super funds will continue to be disengaged, disinclined or unable to assess their superannuation fund. The primacy of net returns in the assessment process would ensure that the interests of these members are protected, even in the common case of these members being disconnected from other services their fund might offer.

We restate our recommendation that the following process be followed for the annual MySuper outcomes assessment:

- Step 1: The trustee to make an assessment of the long term net returns of its MySuper product.
- Step 2: The trustee to compare the long-term net returns of their MySuper product against the long-term net returns of other MySuper products.
- Step 3: The trustee to make an assessment of the appropriateness of the other factors prescribed in the legislation of its MySuper product to their beneficiaries.
- Step 4: The trustee to compare the other factors of their MySuper product against the other factors of other MySuper products.
- Step 5: The trustee to make an assessment of the impact, if any, of the other factors on the long term net returns of its MySuper product.

The system is still maturing

The Explanatory Memorandum (EM) notes that the superannuation system will reach maturity in the next decade as “Australians will have received compulsory superannuation contributions for most or all of their lives”.⁴ This assertion is misleading because the Superannuation Guarantee (SG) rate is progressing at a slower rate, and the system will not actually reach maturity in the next decade. It is for these reasons that we argue it is even more vital for net returns to have primary focus.

Most employees only received superannuation contributions since 1992, at an initial SG rate of 3% with this increasing at a slow rate until it reached the current level of 9.5% in 2014. Legislated increases to 12% are proceeding at an even slower rate, with 12% to be reached (subject to no further government delays) by 2025. This means that, other than people in their twenties, many employees have received SG contributions at a low rate for most of their working life. Most commentators seem to agree that the system is unlikely to reach maturity for about another twenty years.⁵

⁴ EM, page 9, paragraph 1.6.

⁵ Deloitte (2015). *The dynamics of a \$9.5 trillion Australian super system Deloitte projects the next 20 years.* [online] Available at: <http://tinyurl.com/y8qpacr3> [Accessed 27 Sep. 2017].



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While we agree it is time to start looking seriously at the requirements for the post-retirement system, we also believe that continued development and enhancement of arrangements for the accumulation stage should be given the highest possible priority and for the focus to continue to be on net returns.

Recommendation: AIST recommends that the Bill be amended to prioritise the importance of net returns in a two-tiered assessment process to prevent net returns being supplanted or diluted by the range of additional factors identified in the Bill.

Concerns about criteria list

AIST is also concerned that the list of criteria is open-ended, as the legislation provides that the list could be extended by regulation. For example, the level of liquidity, the number of duplicated accounts, and the efficiency of fund administration could be added as matters to be compared. While there may be merit in the consideration of other factors, this should be directed towards the benefits provided to members.

The Bill does not recognise that some of these matters are already addressed in the SIS Act and by prudential standards, and does not provide a weighting for the criteria. The criteria in the proposed test are all important, but are not equally important, and none are as important as pursuing long term net returns.

AIST would oppose the alternate approach of weighting each of the criteria, as this would still involve the reduction in the focus on net returns.

Outcomes assessment should include Choice products

Focusing on Choice products and what they deliver to members should be examined closely, especially in light of the fact that MySuper products outperform and are cheaper.

Moreover, Choice investment options have considerable amounts of money invested in them compared to MySuper products (\$640 billion plus compared to an estimated \$800 billion in MySuper)⁶. These products receive the benefit of the same taxation concessions, yet are not as accountable as MySuper in terms of either reporting or disclosure.

⁶ Figures obtained from Quarterly APRA statistics for period ended June 2017.



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Research⁷ commissioned by AIST in 2016 found that profit-to-member funds (whose median growth and balanced investment options primarily became MySuper options for most Australians) generally outperformed every other category of similar Choice investment options over a 10 year period. The research also found that in addition to generally underperforming, Choice investment options in the for-profit sector (mainly run by banks) were between 53% to 280% more expensive.

AIST continues to voice its concerns that the Choice sector is continually being 'let off the hook' in terms of both reporting and disclosure, with a resultant underperformance in optimizing members' retirement savings.

The same report also demonstrates the positive impact of MySuper products on fee levels, with the report concluding that:

Unlike the fee reductions seen within MySuper products during 2014, Choice products have shown minimal changes to fee structures in recent years, with only small decreases being witnessed.⁸

The report goes on to note that the median MySuper fee is \$78 p.a. plus 0.83% of the account balance across all funds in the survey, well less than the median fees for all Choice categories (with the exception of the lower-performing diversified fixed interest and cash).

In addition to this clear expression of the default system working, the ongoing implementation of the Stronger Super package of measures demonstrates a system that is delivering on a widespread basis:

- MySuper products able to be offered from 1 July 2013, with the final transition of default amounts in July 2017.
- SuperStream used for data and e-commerce standards from 2013, with an ongoing program of improvements and new initiatives. Current savings estimated at \$2.4 billion per year.
- Operation of new APRA new prudential and expanded reporting standards for superannuation since 2013 has improved accountability and standards in the system.

MySuper has delivered better outcomes than Choice products and while we strongly agree that it is important to focus on MySuper, given its default nature, it is imperative that this is not at the

⁷ SuperRatings (2016). *Australian Institute of Superannuation Trustees: Fee and performance analysis*. December 2015. [online] 2016: Australian Institute of Superannuation Trustees, pp.18-20. Available at: <http://tinyurl.com/h6sgcth> [Accessed 7 Aug. 2017].

⁸ SuperRatings (2016) as cited in a previous footnote, p.5.



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expense of focusing on Choice products that also have a significant number of members and assets.

While AIST agrees that super funds should be held to the highest standards of accountability and transparency, this is self-evidently not applying on an equal basis across all superannuation sectors. Choice superannuation products do not have the same high standards that apply to MySuper products.

The following is an outline of the differential treatment between Choice and MySuper products:

- The requirements of section 29VN(a) to (d) of the SIS Act do not apply to Choice products
- There is no current requirement for Choice products to publish a product dashboard.
- The proposal does not include that the proposed annual MySuper outcomes assessment should apply to Choice products.
- There are no explicit duties on trustees to promote the financial interests of beneficiaries or currently apply a scale test for Choice products. We note there are over 40,000 Choice investment products⁹ which we believe have developed, in part, because they are not brought to account through suitable disclosure and reporting requirements.
- There is no requirement to produce a shorter product disclosure statement for legacy Choice products.

While we agree that high standards should be consistently applied across the financial system, this should also mean that high standards are also consistently applied within and between superannuation products.

AIST submits that a clear focus on maximising retirement outcomes for members must be maintained for MySuper and – consistent with the sole purpose test – applied to all APRA-regulated superannuation products.

Recommendation: AIST recommends that the provisions in the Bill be amended to ensure that they apply equally to all superannuation products, in order that best practice and standards can be delivered across the board.

⁹ Rowell, H. (2015). *Forum 3: 'Tapping into the regulators radar'*. Speech to the Conference of Major Superannuation Funds, 18 March 2015. [online] Sydney: Australian Prudential Regulation Authority. Available at: <http://tinyurl.com/yc8vy4h6> [Accessed 27 Sep. 2017].



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In our *Improving Accountability and Member Outcomes in Superannuation* submission¹⁰ on the Exposure Draft legislation we submitted that the MySuper outcomes assessment should be made in writing and publicly available because we support meaningful disclosure of data. We acknowledge that this concern has been addressed in the draft Bill, however we reiterate our argument that:

- The outcomes assessment should apply to all products, including Choice; and
- The obligation to make trustee determinations publicly available should apply to Choice products.

¹⁰ AIST (2017). *Improving Accountability and Member Outcomes in Superannuation*. 11 August 2017, AIST Submission. [online] Melbourne: Australian Institute of Superannuation Trustees. Available at: <http://tinyurl.com/y76t8lsc> [Accessed 27 Sep. 2017].



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Authority to offer a MySuper product

We support the measures to provide APRA with enhanced capacity to refuse or cancel a MySuper authorisation, subject to the financial interests of members being primarily defined as the promotion of optimal long term net returns. Our comments in relation to this chapter are to be read in the context of our position on the annual MySuper outcomes assessment in the Bill outlined above.

We support the requirement for the trustees of superannuation funds to be held to a high standard, especially in those circumstances where members do not actively participate in the management of their superannuation interests. This requirement and the higher standards applicable to trustees offering a MySuper product are entrenched in the existing provisions of the SIS Act.

AIST supports the proposed requirements for APRA to be able to ensure that trustees offering a MySuper product are able to provide products of sufficient quality to promote the financial interests of members, where the pursuit of optimal long term net returns are the primary objective and other factors are secondary.

We would oppose an outcome where APRA was able to refuse or cancel a MySuper authorisation because the trustee did not offer a wide range of features to members of MySuper products, notwithstanding their delivery of optimal net returns to these members.

Given that most MySuper members are not involved in the direct management of their super, there can be limited benefits in providing members with a wide range of products and services that they may not be aware of, want or need.

It is the responsibility of trustees to assess the nature of their members with a MySuper interest, and determine what range of other features are appropriate in their circumstances. This assessment may result in the offering of a wide or a narrow range of features, but should always (in AIST's view) be subject to confirmation that the offering of these features is not inconsistent with the pursuit of optimal long term net returns.

Furthermore, subject to the concerns expressed in the previous section, AIST does not oppose the proposal to give APRA increased authority in relation to the authorisation of a MySuper product, including the change in the assessment test from 'is likely to' to 'no reason to believe'.

We believe that these increased requirements will further entrench the position of MySuper products as the 'gold standard' of superannuation products. AIST agrees with the assertion in the Explanatory Memorandum that these measures should improve the quality of MySuper products, and recommends the extension of higher requirements to other superannuation products.



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The profit-to-member ethos promoted by AIST and our member funds will be enhanced by these changes, as consumers will be able to have even higher confidence in the MySuper products offered by our member funds, supported by these protections.

AIST notes that the proposed changes relate to specific sub-sections of sections 29T and 29U of the SIS Act, and that the other requirements concerning the authority to a MySuper product and the cancellation of MySuper authorisation remain.



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Director penalties

The Bill proposes to allow the imposition of civil and criminal penalties on directors in two main circumstances:

- For contravention of a covenant that is, or is taken to be, in the RSE licensee's governing rules; and
- For contravention of an obligation that is, or is taken to be, in the RSE licensee's governing rules that relates to MySuper Products.

We support the expansion of the director penalty regime and believe it is important to consider whether directors of superannuation funds that offer Choice products are being held to the same standard. If not, we believe they should be.

Profit-to-member funds are committed to advancing the best interests of their members and the funds return all investment earnings to their members. The governance arrangements within the profit-to-member sector are robust and contribute towards a positive member-first ethos. While we support the proposed director penalty regime measures, we note that poor conduct on behalf of directors has largely been a non-issue for the profit-to-member sector.

Furthermore, the introduction of a civil and criminal penalty regime for directors under the SIS Act does not significantly alter the status quo, as directors of superannuation funds are still required to have regard to the codified duties in the *Corporations Act 2001 (Cth)* and those in general law.

Contravention of MySuper obligations

Directors of RSE licensees whose fund offers a MySuper product have enhanced director obligations. The directors must ensure that they personally exercise a reasonable degree of care and diligence for the purposes of ensuring that the trustee carries out the additional obligations for trustees in relation to MySuper products.¹¹

The amendments propose to make a contravention of this duty a civil penalty provision that may give rise to criminal consequences. We are supportive of this measure, however it should be considered whether directors of superannuation funds that offer Choice products should be held to the same standards.

¹¹ *Superannuation Industry (Supervision) Act 1993 (Cth)*, s.29VO.



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Approval to own or control an RSE licensee

We submit that APRA's power to approve owners and controllers of RSE licensees must be exercised judiciously and be merits reviewable.

The legislative amendment proposes to require persons (including corporations) to apply to APRA to own, or hold, a controlling stake¹² in an RSE licensee. APRA will also have the power to intervene where they think a person, group of persons, or a company has practical control of the RSE licensee.

APRA will be given a wide variety of powers, in particular:

- Deny a change in ownership where it has concerns about the new owner;
- Give a person, group of persons, or company a direction to relinquish their control of the RSE licensee in certain circumstances; and
- Remove or suspend an RSE licensee where it is subject to control of its owner.

The exercise of these new powers could significantly impact the operations of the RSE licensee and its staff. As such, we believe it is imperative that the power is exercised judiciously and only after a full consideration of relevant circumstances. We submit that the decision be reviewable, as outlined in the Bill, and that this right is not replaced or removed.

In the Bill a person affected by APRA's decision to refuse to give approval to hold a controlling stake in the RSE licensee, or direction to a person to relinquish control can:

- Request the regulator reconsider the decision;¹³ and/or
- Apply to the Administrative Appeals Tribunal for a merits review of the decision.¹⁴

It is imperative that these rights be maintained.

¹² *Superannuation Industry (Supervision) Act 1993 (Cth)* proposed s 10(1) defines controlling stake as a shareholding in the RSE licensee of more than 15%.

¹³ *Superannuation Industry (Supervision) Act 1993 (Cth)* s 344(1).

¹⁴ *Superannuation Industry (Supervision) Act 1993 (Cth)* s 344(8).



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APRA directions power

General directions power

The draft Bill proposes to amend the SIS Act to bolster APRA's supervision and enforcement powers over RSE licensees. The Explanatory Memorandum outlines that the new powers are necessary to allow APRA to respond to issues in a variety of circumstances, not all of which can be foreseen.¹⁵

While we do not oppose this expansion of APRA's powers, we have a number of concerns.

Interaction between the existing regulatory framework and the proposed powers

While we do not oppose the new APRA powers in principle, we are concerned that the proposed new powers have been recommended without an in-depth consideration of the existing regulatory framework. APRA already has wide-ranging directions powers that empower it to monitor and, if appropriate, address the conduct of RSE licensees. These powers are provided through the SIS Act and specifically through enforceable conditions that apply to each RSE licensee.

The expansion of the framework should not be done at the expense of a consideration of the existing regulatory framework. It is more efficient to consider how the existing regulatory framework can address the perceived concerns and could be enhanced or modified to be more effective, rather than simply adding to the framework without a detailed consideration of the existing powers.

APRA has a significant and adequate regulatory tool-box, which already allows it to achieve the stated objective in the Explanatory Memorandum that the powers are needed to 'intervene at an early stage to address prudential concerns.'¹⁶

Appendix 1 details APRA's extensive regulatory powers.

¹⁵ EM, page 55, para 6.3 and 6.4.

¹⁶ EM, page 55, para 6.3.



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The table below summarises APRA’s current regulatory tool-box and explains how APRA’s existing powers could address the same concerns that the proposed directions powers seek to address.

Proposed directions power affecting RSE licensees	Existing APRA power that can address the issue
Directions to comply with regulatory or prudential obligations	APRA has the power to issue a direction to an RSE licensee if APRA has reasonable grounds to believe that the RSE has breached a condition of their licence. ¹⁷ Licence conditions include a requirement for the RSE licensee to comply with RSE licensee law, which includes the SIS Act, regulations, prudential standards and other legislation. ¹⁸
Protect interests of beneficiaries	APRA has extensive powers that culminate in the protection of the interests of beneficiaries, for example APRA can: <ul style="list-style-type: none"> • Investigate the RSE licensee if the SIS Act, regulations, or prudential standards may have been contravened. • Appoint an inspector to investigate the affairs of a superannuation entity.¹⁹ • Issue infringement notices and impose penalties under those notices.
Directions to address certain financial risks, including preventing the RSE licensee from receiving contributions, borrowing, paying or transferring money or assets, undertaking financial obligations and similar.	APRA already has a wide suite of powers available where these concerns are live, for example APRA can investigate an RSE licensee if they believe the financial position of the superannuation entity may be unsatisfactory. ²⁰ APRA can also issue directions about acquiring or disposing of assets, or a freezing of assets if the entity’s

¹⁷ *Superannuation Industry (Supervision) Act 1993 (Cth)* s 29EB (a)–(b).

¹⁸ *Superannuation Industry (Supervision) Act 1993 (Cth)* s 29E(1)(a) read with section 10(1).

¹⁹ *Superannuation Industry (Supervision) Act 1993 (Cth)* s 265(1).

²⁰ *Superannuation Industry (Supervision) Act 1993 (Cth)* s 263(1)(b).



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	<p>conduct is likely to adversely affect the interests of beneficiaries.²¹</p> <p>Under Part 17 of the SIS Act APRA has extensive power to suspend and replace a trustee. The grounds for suspension are broad, which enables APRA to use this power to address financial risks.²²</p>
Direction to the RSE licensee to remove a responsible officer	<p>APRA has power to disqualify individuals that are, or were, responsible officers of trustees.²³</p> <p>Prudential Standard SPS 520 – Fit and Proper ensures RSE licensees meet minimum requirements for the fitness and propriety of individuals to hold certain positions of responsibility.</p>
Direction to order the audit of the affairs of the RSE licensee or RSE	<p>APRA can require the trustee to appoint an individual to investigate the whole or specified part of the financial position of the entity and make a report on this investigation.²⁴</p> <p>Prudential Standard SPS 510 – Governance, paragraph 53 states that the board audit committee must ensure the adequacy and independence of both internal and external audit functions.</p> <p>Prudential Standard SPS 310 - Audit and Related Matters sets out a number of internal and external auditor requirements that RSE licensees must adhere to, as well as the prescribed content of the audit.</p> <p>RSE licensee auditors must be approved within the meaning of the SIS act, to ensure no disqualified auditors can audit a fund.</p>

²¹ *Superannuation Industry (Supervision) Act 1993 (Cth)* s 264 (1)–(5).

²² *Superannuation Industry (Supervision) Act 1993 (Cth)* part 17.

²³ *Superannuation Industry (Supervision) Act 1993 (Cth)* s 126A (1)–(3).

²⁴ *Superannuation Industry (Supervision) Act 1993 (Cth)* s 257 (1)(a)–(b).



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	<p>Prudential Standard SPS 220 – Risk Management requires RSE licensees to implement satisfactory internal and external audit arrangements.</p> <p>There is a positive obligation on auditors and actuaries to inform the regulator in writing if they identify any contraventions of the SIS legislation or the <i>Financial Sector (Collection of Data) Act 2001</i> (FSCDA) may have occurred.²⁵ This notification requirement ensures the regulator can act as soon as practicable if necessary.</p>
<p>Direction to order an actuarial investigation of the RSE licensee or RSE</p>	<p>There is a positive obligation on auditors and actuaries to inform the regulator in writing if they identify any contraventions of the SIS legislation or FSCDA may have occurred.²⁶ This notification requirement ensures the regulator can act as soon as practicable if necessary.</p> <p>Prudential Standard SPS 160 - Defined Benefit Matters, paragraph 14, sets out extensive obligations on RSE licensees to, inter alia, appoint RSE actuaries to undertake and report on actuarial investigations at regular intervals.</p>

Recommendation: We believe that APRA’s current regulatory tool-box is expansive and that it is appropriate to consider how the existing framework can be improved in ways other than through broad expansion.

Specific concerns related to directions power over connected entities

The proposed directions powers also would enable APRA to give a direction to a connected entity. A connected entity, in relation to a RSE licensee, is a subsidiary of that RSE licensee and any other entity of a kind prescribed by the regulations.²⁷

²⁵ *Superannuation Industry (Supervision) Act 1993 (Cth)* s 129(3).

²⁶ *Superannuation Industry (Supervision) Act 1993 (Cth)* s 129(3).

²⁷ *Superannuation Industry (Supervision) Act 1993 (Cth)* s 10(1).



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While we support the proposed extension of the directions power, the extension to connected entities is not broad enough, as it does not enable APRA to address the conduct of entities that are not subsidiaries of the RSE licensee, but nevertheless have a close connection with the RSE licensee.

Typically, superannuation funds that are part of a vertically integrated structure with a parent entity use the services of related parties that are also within the business structure, but are not actually a subsidiary of the RSE licensee. In these circumstances the proposed power would do very little to protect the interests of beneficiaries should the conduct of a related entity be errant.

While we support the expansion of the directions power to cover connected entities, the current provision is fundamentally flawed because it does not have consistent application across sectors of the superannuation industry –notably, superannuation funds operating in a retail environment would attract less scrutiny.

It is imperative, for comparability and equal protection of members' interests, that there is consistent coverage of the power across the system.

In summary, while we do not believe that the additional directions powers are necessary we do not oppose the measures outlined in the Bill. We believe it is imperative that there is consistent application of standards across all sectors of the superannuation industry. As such, the power to issue a direction to connected entities must be reviewed to ensure parity between industry sectors.

Finally, the additional powers underline the high degree of regulation that applies to superannuation funds and should give consumers confidence in the integrity of the system.

The directions powers are broadly drafted

While we are generally supportive of APRA's power to issue directions, we are concerned about the broad, open-ended nature of the provisions that will allow APRA to issue directions in almost any circumstance. Not only can APRA issue a direction in almost any circumstance, it can issue almost any direction it chooses.

Any circumstance

Proposed Part 16A of the *Superannuation Industry (Supervision) Act 1993* will enable APRA to issue directions to an RSE licensee in ten different circumstances, such as:

- If APRA has *reason to believe* there has been a contravention of the legal framework (SIS Act, regulations, prudential standards) or if they have *reason to believe* the RSE licensee is *likely to contravene* the legal framework; or



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- There has been a contravention of a condition or a direction under the SIS Act or the *Financial Sector (Collection of Data) Act 2001*; or
- The direction is necessary in the interests of beneficiaries.

While we understand the importance of financial services regulators having the necessary powers to perform their functions, the proposed direction power can be triggered easily. For example APRA can issue a direction where they have reason to believe that the direction is necessary in the interests of beneficiaries. It may be appropriate to consider whether the triggers for the power should be reassessed.

Any direction

APRA has the power to give a wide variety of directions to RSE licensees, including a direction (at proposed subsection 131D(2)):

(n) to do, or refrain from doing, anything else in relation to the affairs of:

- (i) The RSE licensee; or*
- (ii) A registerable superannuation entity of the RSE licensee.*

This provision is worded incredibly broadly, and effectively allows APRA to direct a superannuation fund trustee however they see fit. There appears to be no restriction on what they can direct a superannuation fund to do. We believe that the ability of APRA to issue any direction they see fit should be re-considered.

We also note that proposed section 131DA of the SIS Act contains a drafting error in subsection (5)(a). The numbering sequence in that subsection is not sequential and reads: (i), (ii), (iii), (ii). This minor issue should be addressed.

We believe it is important for regulators to have sufficient and appropriate powers to protect members' interests, and ensure compliance with RSE licensee laws and prudential standards, however if the extra powers are deemed to be appropriate they must be exercised judiciously.

There have been few scandals in the profit-to-member superannuation sector and heavy involvement by APRA in the operation or management of funds has been rare.



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Portfolio holdings disclosure

AIST continues to support legislation for RSE licensees to make their portfolio holdings publicly available. We supported these measures during the Super System Review and in relation to the subsequent *Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Bill 2012*, and we maintain this support notwithstanding these measures having been in limbo for the past five years.

We have a number of concerns regarding the measure, in particular:

- The reporting date should be aligned with that set by ASIC.
- Reduced obligations for non-associated entities and parties to contacts.
- Various exemptions from the disclosure requirements.
- The need for consistent disclosure methodology reporting date.

AIST calls for greater consistency and certainty given the changes that have occurred over the past five years, despite the measures not having yet been implemented.

The Bill now establishes a new application date of 31 December 2018 for the Portfolio Holdings Disclosure Obligation. This is the *fifth* different start date that has been set for these measures, and follows the announcement by ASIC on 1 June 2017 to set a new start date of 1 July 2019.

A 31 December 2018 start date is effectively one year earlier than a 1 July 2019 start date (e.g., while a hypothetical 1 January 2019 date would be effectively six-month earlier given the pattern of report requirements).

In its announcement, ASIC stated that:

The deferrals will provide industry with certainty about the commencement dates of the requirements, reduce the administrative burden on industry and provide it with time to finalise their preparation for the introduction of the requirements.

We submit that a reporting date of 31 December 2018 is not achievable for many superannuation funds. Funds will require at least one year lead time from the time that complete details are available, in order to undertake the necessary change program. Accordingly, we recommend that the Bill be amended to align the commencement date for Portfolio Holdings Disclosure with that recently set by ASIC, that is, 1 July 2019.

Reduced obligations

We are concerned that the measures in the Bill do not place sufficient reporting obligations on non-associated entities and parties to contracts.



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Non-associated entities

AIST opposes the removal of the obligation to include information about financial products or other property that non-associated entities have directly invested in. This is a change from the current law requiring information on non-associated entity investments to be disclosed.

These measures should provide a consistent level of disclosure regardless of how the investments are held. From a consumer perspective, who holds an investment is often irrelevant to their consideration of an investment.

Parties to contacts

AIST opposes the removal of the reporting obligations on parties acquiring a financial product using the assets of an RSE. The removal of this obligation will make it more difficult for RSE licensees to obtain the information required to meet these disclosures.

Exemptions for the disclosure requirements

We have a number of concerns regarding the exemptions from disclosure requirements, in particular the exemptions relating to disclosure of assets held at each stage of a MySuper product with a lifecycle investment option, lack of clarity around materiality thresholds, and caps on commercially sensitive investments.

MySuper products with lifecycle investment options

AIST opposes the removal of the existing law requiring RSEs to disclose assets held at each lifecycle stage. An individual member seeking to understand the assets in their superannuation benefits would want to know the actual assets held on their behalf, not the aggregated holdings across the whole investment product.

Immaterial investments

The ability for regulations to provide that an investment is not a material investment is carried over from the current law. AIST recommends that the materiality be defined in the regulations to a level of specificity that provides RSE Licensees with certainty. For example, suitably specificity could be for the disclosure of assets that constitute more than 1% of the value of an investment option or the largest 100 assets in the option.

Commercially sensitive investments

AIST continues to be concerned about the arbitrary nature of the 5% cap on the commercially sensitive assets exemption. Some RSE licensees have more than 5% of assets in commercially sensitive assets and consequently, are likely to result in applications to ASIC for relief.



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AIST strongly supports the inclusion of a requirement for the exemption of any commercially sensitive investments to be justified on the basis that the disclosure would also demonstrably be detrimental to members' interests.

Disclosure methodology

Disclosure of "look-through" (i.e., assets derived from assets) provisions is supported, provided there is a consistently applied methodology. The explanatory memorandum notes that regulations can prescribe the format of disclosure. This should be prescribed in ASIC guidance rather than regulations to promote a more iterative and better disclosure outcome.

Interaction with Choice product dashboards

In previous legislation, and in ASIC's consideration both portfolio holdings disclosure and choice product dashboards have been considered in tandem. Both measures seek to improve transparency and assist consumers to better understand their super and compare products. Choice product dashboard requirements have been deferred by ASIC until 1 July 2019 and also require further legislative support in order to be functional.

We believe that the Government should also address outstanding Choice product dashboard matters in the legislation. Choice product dashboard requirements also be aligned with MySuper product dashboard requirements and rolled out in tandem with the proposed portfolio holdings disclosure requirements.

The need for transparency in superannuation

The need for transparency extends to a number of areas. There is presently a list of projects being undertaken in the financial services industry aimed at improving disclosure, in addition to portfolio holdings disclosure, including:

1. Website disclosure mandated by section 29QB of the *Superannuation Industry (Supervision) Act 1993* (the "SIS Act") requires superannuation fund trustees to maintain certain items of information, such as in relation to directors, board meetings and annual reports online and strictly governs when these must be updated.
2. Product dashboards, presently mandatory for MySuper investment options and under development for Choice investment options require the maintenance of a rigid information set which is designed to promote comparability between investment products.
3. Reporting requirements mandated by section 29QC of the SIS Act are designed to ensure that information provided to the prudential regulator as part of fund reporting can be equated with similar information provided to the financial services regulator.



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4. Fee and cost disclosure described in ASIC's *Regulatory Guide 97: Fee and cost disclosure* (RG 97) is presently under examination by industry working groups and has been for some time.

Concerns regarding carve-outs and preferential treatment for certain products paint a picture of an industry where disclosure is inconsistent.

The fact that so many disclosure issues are either under development or under review accurately highlights issues related to disclosure in the superannuation industry. A summary of key gaps, exemptions and carve-outs from the regulatory framework is contained in Appendix 2.

Common features of issues related to the projects above include the inability for members to properly consider the impact of related party payments, particularly where investments are placed by fiduciaries with associated entities. Another issue is the opacity of pricing related to use of pooled investments. There are presently no limits as to how many layers of pooled investments money can be invested through, however there is a limit to how far regulation appears to want to look. It goes without additional clarification that a "ticket is clipped" at every level of investment pooling, and that associated entities are often used.

We also note that vehicles such as insurance are not expressly considered in scope for this measure, which should be addressed with the introduction of Comprehensive Income Products for Retirement.

According to the World Bank²⁸, a core element of improving pension system efficiency is to ensure that costs which do not contribute to increased returns are reduced. They go on to note that 'competition by itself appears to be inadequate to drive lower costs if individual choice alone is involved. Lack of transparency is a big issue in determining costs.'²⁹

The approach taken with portfolio holdings disclosure must be consistent with these other projects.

²⁸ The World Bank, (2016). *Outcomes based assessment for private pensions: a handbook*. [online] The World Bank. Available at: <https://tinyurl.com/keyrhr5> [Accessed 11 Apr. 2017].

²⁹ The World Bank (2016), as cited in a previous footnote, p.21.



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Annual members' meetings

We reiterate our support for the requirement to hold Annual Members' Meetings (AMMs), but submit that funds should have the flexibility to choose the most appropriate engagement strategy with their members.

We disagree with the assertion in the Explanatory Memorandum that:

Many superannuation fund members seek to ask questions of their funds concerning their operation and performance. However, in a large number of cases members have little or no ability to have their questions asked or answered.³⁰

Many profit-to-member superannuation funds have active member engagement programs in place, including annual member briefings, and these vary depending on the particular membership demographic of the fund, business mix and overall strategy.

AIST agrees that fund transparency and accountability is vital, and supports measures to continually improve engagement with fund members. This is demonstrated in the AIST Governance Code, Requirement 5.1 of which reads:

A profit-to-member super fund must develop and implement a stakeholder engagement program, for effective disclosure of relevant and material issues. The program must provide opportunities for directors and senior management to communicate directly with stakeholders and for stakeholders to ask questions of them.³¹

We believe that providing an avenue for members, and other stakeholders, to directly engage with the RSE licensee and ask questions is an effective way for the fund to identify and respond to issues that are of interest to their members and stakeholders.

While we support mechanisms aimed towards promoting engagement with super fund members and increasing visibility of fund operations, there is a need to ensure that the regulatory burden and costs associated with the mechanisms are managed and that funds are given flexibility to determine the most appropriate engagement strategy and avenue based on the needs of their members.

³⁰ EM, page 89, para 83.

³¹ AIST Governance Code Guidance. (2017). 2017. [online] Melbourne: Australian Institute of Superannuation Trustees, p.20. Available at: <http://tinyurl.com/ybd6aaol> [Accessed 27 Sep. 2017].



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We note that a number of the concerns raised in our submission³² on *Superannuation Legislation Amendment (Trustee Governance) Bill 2015* were addressed, in particular the RSE licensee now has up to nine months after the end of the entity's income year to hold an AMM.

However a number of our concerns have yet to be addressed and we submit that:

- The Bill should clarify the meaning of 'notice' and the notice requirement should be able to be satisfied through a publication of the meeting on the RSE's website, and in the Annual Report (if appropriate).
- The Bill should outline that the content of the notice must be in plain English.

We believe that extensive prescription, and the requirement to hold an AMM in the current format, may increase costs. While some funds currently have a member engagement program, which runs on a cost-effective basis, the Bill may introduce additional cost burdens. These costs will ultimately be borne by members.

As stated above, we believe that the overly prescriptive nature of the requirements risks stifling innovation. This is already evident in the context of Annual General Meetings in the corporate sector, with groups calling for a relaxation of legislative rules around issues such as virtual meetings.³³

We support the requirement for AMMs, however stress that funds should be given the freedom to choose the most appropriate engagement strategy with their members. Ultimately the trustee is in the best position to determine the needs of their members and the best way to engage with them.

³² AIST (2015). *Reforms to Superannuation Governance*. 14 October 2015, AIST Submission - Senate Economics Legislation Committee. [online] Canberra: Parliament of Australia. Available at: <https://tinyurl.com/ochmax4> [Accessed 27 Sep. 2017].

³³ Cole, S. (2016). *The Future of the AGM - don't throw the baby out with the bathwater*. Steven Cole LLB, FAICD, Cole Corporate, December 2016. [online] Melbourne: Australian Institute of Company Directors, p.5. Available at: <http://tinyurl.com/yc6ecbdr> [Accessed 27 Sep. 2017].



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Reporting standards

We strongly support the collection and analysis of data which would help APRA review the impact of related party costs, as well as the delivery of fair value to members and we support the development of a robust data collection and use framework. Notwithstanding this support there are a number of issues detailed below that must be addressed first.

A data collection framework could greatly assist with the prioritisation of, and the assessment of the need for, the collection of any new data. This is especially important given the administrative impact on superannuation funds, as well as the (we believe) unprecedented ability of APRA to collect details of any expenditure to any entity which would be provided if the Bill is passed. We also note the proposed amendments to *the Financial Sector (Collection of Data) Act 2001 (FSCODA)* would provide APRA with very broad powers.

Notwithstanding our general support for the reporting framework:

- APRA must conduct another in-depth assessment of the impacts of related party costs, similar to the assessment performed in 2010.
- There is a lack of clarity around key areas of the reporting reforms.
- Existing issues regarding APRA reporting must be resolved prior to the amendments proceeding. These include the implementation of RG 97, disclosing fees and costs in PDSs and periodic statements, as well as the alignment of MySuper and Choice reporting.
- The development of a data collection and use framework must have regard to the factors outlined below.
- There are a number of ongoing reviews and regulatory reforms that impact the collection of data by APRA. The actual and likely impact of these reviews and reforms must be assessed in the context of the proposed reforms.
- Our concerns regarding the proposed amendments to FSCODA must be addressed.

Related party cost analysis

We strongly support the collection and analysis of data which would help APRA review the impact of related party costs, as well as the delivery of fair value to members. AIST has long called for the updating of APRA's 2010 report³⁴ on the impacts of related party costs. This is needed before any review of the efficiency and competitiveness of the superannuation system can take place.

³⁴ Liu, K. and Arnold, B. (2010). *Australian superannuation outsourcing - fees, related parties and concentrated markets*. Working paper, 12 July 2010. [online] Canberra: Australian Prudential Regulation Authority. Available at: <http://tinyurl.com/hkmhken> [Accessed 27 Sep. 2017].



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Lack of clarity

We reiterate our concerns that there is a general lack of clarity around key areas in the reporting proposals. The Bill enables a reporting standard to require an RSE licensee to provide *information* in relation to any money, consideration or other benefit given to another entity by the RSE licensee out of the assets of the RSE of the licensee.³⁵

To ensure adequate clarity, we repeat our concerns and believe it is important for there to be further consultation around the type of information that must be reported.

Reporting priorities

While supportive of the general direction in the proposed amendments to FSCODA, AIST believes that there are two more immediate APRA reporting issues which need to be resolved first:

- The alignment of MySuper and Choice reporting, which is needed to ensure the competitiveness and efficiency of the superannuation system.
- Resolution of fee and cost reporting flowing from the implementation of *Regulatory Guide 97: Disclosing fees and costs in PDSs and periodic statements* (RG 97).

The data collection and use framework must be developed appropriately

We believe that a robust *data collection and use* framework would greatly assist the superannuation sector to better contextualise reporting to APRA. The need for such a framework is extremely important, especially in light of what we believe is the unprecedented ability to collect data relating to any expense paid to any entity.

We call for the development of such a framework, which could cover the following:

- Objectives for data collection and reporting;
- Principles for determining the importance of calls for new data reporting;
- The relevance of the data being collected;
- How the data will be analysed and used;
- How confidentiality of certain data will be maintained;²⁶
- Data mapping and the need for agencies to justify why they require the data in a different format.

³⁵ *Financial Sector (Collection of Data) Act 2001* proposed s 13(4C).



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Determining the impact of ongoing reviews and regulatory reforms

We note that there are a number of reviews and regulatory reforms which impact the collection of data by APRA:

- The Productivity Commission reviews which recommend the establishment of efficiency criteria;
- RG 97;
- Treasury consultations regarding design and distributions obligations and product intervention power.
- Portfolio holdings disclosure in this Bill.

AIST calls for the impact of these reviews and reforms to be assessed within the context of a data collection and use framework. It is extremely difficult for superannuation funds to assess the administrative impact without examining all of these issues together.

Concerns regarding FSCODA

We reiterate our general support for this measure, but there is insufficient clarity from the proposals to be able to assess their impact.

Our concerns regarding the proposed amendments to FSCODA include:

- The Bill would give APRA the power to stipulate that payments to any type of “entity” (undefined) be reported. While we appreciate that it has been difficult in the past to suitably define “related party” and that this has perhaps driven the use of a very broad term, we seek clarity.
- There is no clarity regarding the grouping, use, and confidentiality of management and operational expenses.
- We query whether a Regulatory Impact Statement which takes into account administrative impact on funds has been prepared.
- It has taken the industry a long time to resolve the level of ‘look-through’ with RG 97. Accordingly, we seek consultation regarding what level of ‘look-through’ the proposed amendments to FSCODA envisage.

Finally, we query how APRA might use the data regarding possible interventions into the operational and management decisions of superannuation funds.

In summary, while we support the general direction of the proposed amendments to FSCODA, further consultation is required.



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Appendix 1: APRA's regulatory framework

This table outlines the powers that are provided to APRA through legislative instruments. It excludes powers that are contained in the suite of superannuation prudential standards.

APRA power	Detail of power
<i>Power to seek injunction</i>	APRA has the power to seek an injunction to restrain persons from engaging in, or proposing to engage in, specified conduct outlined in the SIS Act. ³⁶
<i>Suspend or remove a trustee</i>	APRA has the power to suspend or remove a trustee of a superannuation entity in circumstances, such as: ³⁷ <ul style="list-style-type: none"> • It appearing to APRA that conduct has been, is being, or proposed to be engaged by the RSE licensee may result in the financial position of the entity or of any other superannuation entity becoming unsatisfactory. • The RSE licensee breaching a RSE licence condition.
<i>Disqualification</i>	APRA has power to disqualify individuals that are, or were, responsible officers of trustees. ³⁸
<i>Appointing acting trustee</i>	APRA can appoint an acting trustee on suspension or removal of a superannuation entity. ³⁹
<i>Infringement notices</i>	APRA can issue infringement notices if they reasonably believe that a SIS Act provision has been contravened and the provision is subject to the infringement notice regime. ⁴⁰

³⁶ *Superannuation Industry (Supervision) Act 1993* (SIS Act) s 315. All references in this section are to the SIS Act.

³⁷ SIS Act s 133.

³⁸ SIS Act s 126A (1) – (3).

³⁹ SIS Act s 314.

⁴⁰ SIS Act s 223A.



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<i>Ongoing reviews of management and operation of entities</i>	APRA regularly reviews the management and operations of superannuation entities through reviewing various reports received by those entities under the law.
<i>Investigate</i>	<p>APRA can investigate an RSE licensee if they believe the financial position of the superannuation entity may be unsatisfactory.⁴¹</p> <p>APRA can also require the trustee to appoint an individual to investigate the whole or specified part of the financial position of the entity and make a report on this investigation.⁴²</p>
<i>Directions power</i>	<p>APRA has the power to issue a direction to an RSE licensee if APRA has reasonable grounds to believe that the RSE has breached a condition of their licence.⁴³ Licence conditions include a requirement for the RSE licensee to comply with RSE licensee law, which includes the SIS Act, regulations, prudential standards and other legislation.⁴⁴</p> <p>APRA can also issue directions about acquiring or disposing of assets, or a freezing of assets if the entity’s conduct is likely to adversely affect the interests of beneficiaries.⁴⁵</p>
<i>Directions power – prudential standards</i>	APRA can issue a direction to a RSE licensee if it has reasonable grounds to believe that the RSE licensee has not complied with prudential standards. ⁴⁶

⁴¹ SIS Act s 263 (1)(b).

⁴² SIS Act s 257 (1)(a)–(b).

⁴³ SIS Act s 29EB (a)–(b)

⁴⁴ SIS Act s 29E(1)(a); s 10(1).

⁴⁵ SIS Act s 264 (1) – (5).

⁴⁶ SIS Act s 29E(1)(a); s 10(1).



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	<p>APRA has power, enshrined in legislation, to make prudential standards relating to prudential matters. Prudential matters are widely defined.⁴⁷</p> <p>These powers effectively mean that APRA has a high degree of flexibility, and ability, to develop and enforce various requirements on RSE licensees.</p>
<i>Obligations on auditors and actuaries</i>	<p>There is a positive obligation on auditors and actuaries to inform the regulator in writing if any contraventions of the SIS legislation or the <i>Financial Sector (Collection of Data) Act 2001</i> (FSCDA) may have occurred.⁴⁸ This notification requirement ensures the regulator can act as soon as practicable if necessary.</p>
<i>Power to approve a RSE licence</i>	<p>APRA has the power to grant a RSE licence, provided specified criteria are met.⁴⁹</p>
<i>Power to impose additional conditions on an RSE licensee</i>	<p>APRA has the power to impose additional conditions on RSE licensees, above minimum legislative conditions.⁵⁰</p>
<i>Powers related to licensing of trustees</i>	<p>Part 2A of the SIS Act sets out APRA’s broad powers and responsibilities regarding the licensing of trustees and includes:</p> <ul style="list-style-type: none"> • Power to grant or refuse a RSE license.⁵¹ • Power to impose additional conditions on RSE licensees at any time.⁵²

⁴⁷ SIS Act s 34C.

⁴⁸ SIS Act s 129(3).

⁴⁹ SIS Act s 29D.

⁵⁰ SIS Act s 29EA.

⁵¹ SIS Act s 29D; s 29DE.

⁵² SIS Act s 29EA.



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	<ul style="list-style-type: none"> • Power to vary or revoke licence conditions.⁵³ • Power to cancel a RSE license.⁵⁴
<i>Powers related to RSEs</i>	<p>Part 2B of the SIS Act sets out APRA’s powers regarding the management of RSEs and includes the power to:</p> <ul style="list-style-type: none"> • Register or refuse to register an RSE.⁵⁵ • Cancel the registration of an RSE.⁵⁶
<i>Powers related to MySuper</i>	<p>Part 2C of the SIS Act sets out APRA’s powers related to MySuper products and includes the power to:</p> <ul style="list-style-type: none"> • Authorise or refuse authorisation for an RSE licensee to offer a MySuper product.⁵⁷ • Cancel a MySuper product authorisation.⁵⁸
<i>Power to declare superannuation funds as public offer funds</i>	<p>APRA has the power to declare superannuation funds as public offer funds.⁵⁹</p>

⁵³ SIS Act s 29FD.

⁵⁴ SIS Act s 29G.

⁵⁵ SIS Act s 29M.

⁵⁶ SIS Act s 29N.

⁵⁷ SIS Act s 29T; s 29TE.

⁵⁸ SIS Act s 29U.

⁵⁹ SIS Act s 18(6).

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Appendix 2: At a glance - inconsistent treatment of choice superannuation products

This is an extract from AIST’s submission⁶⁰ to the Senate Inquiry into consumer protection in the banking, insurance and financial services sector:

The following table summarises the numerous exemptions, gaps and inconsistencies afforded through the legislative environment to choice superannuation products. At 30 June 2015, choice superannuation products cover \$904,556 million of members’ pre-retirement superannuation moneys compared with \$428,300 million in MySuper. More detail regarding these may be found in AIST’s submission.

Table 1 – Overview of exemptions from regulatory framework

Different treatment	Comments	Impact on consumers
No explicit duties on trustees to promote the financial interests of beneficiaries, or apply a scale test for choice products/investment options.	<p>The value of retirement savings in pre-retirement choice products /investment options is double the value in MySuper products.</p> <p>In 2014 SuperRatings found substantial differences between fees for MySuper and choice products, particularly within retail superannuation funds – even when the underlying asset allocations were almost identical.</p> <p>According to APRA there are 120 MySuper products but over 40,000 member investment choices.</p>	<p>The compounding effect of higher fees over long term reduces retirement incomes for members of choice products.</p> <p>Choice overload baffles members.</p> <p>The choice sector of the superannuation system is not achieving efficiencies of scale.</p>
The Government deferred the requirement for choice dashboards in 2014, 2015 and 2016.	<p>The Super System Review, Financial System Inquiry, and the Grattan Institute have all concluded that the level of fees paid by members is too high.</p>	<p>Members of choice products/investment options do not have a dashboard and so cannot easily compare their returns, fees or costs with MySuper products.</p>

⁶⁰ AIST (2017). *Senate Inquiry into consumer protection in the banking, insurance and financial services sector*. 7 March 2017, AIST submission. [online] Melbourne: Australian Institute of Superannuation Trustees, pp.9-12. Available at: <https://tinyurl.com/le6uqjb> [Accessed 6 Jul. 2017].



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<p>It plans to amend the law so funds would only need to produce dashboards for their 10 largest choice options.</p>	<p>SuperRatings has criticised the poor level of disclosure of fees, noting there is still a long way to go to achieve comparability of fees across MySuper and choice products/investment options.</p>	<p>Under the Government’s proposal, dashboards will not be required for most choice investment options.</p>
<p>APRA does not collect or publish statistics on choice products/investment options equivalent to the comprehensive statistical collection derived from the MySuper reporting standards.</p>	<p>APRA deferred collecting data for choice products/investment options for consideration during the development of the requirements for choice dashboards.</p>	<p>Members rely on APRA, employers, advisers, Government, researchers, commentators and trustees to analyse the characteristics and performance of choice products/investment options. Lack of data hampers this.</p>
<p>No requirement to ensure switching funds is in the best interests of the member when giving general advice or under no-advice business models.</p>	<p>ISA analysis of Roy Morgan research found an increase in cross-selling retail superannuation using general advice and no-advice business models.</p>	<p>Members are switched from a MySuper product to an inferior choice product/investment option, when it is not in the best interests of the member.</p>
<p>New fees and costs disclosure requirements do not apply to superannuation held via a platform.</p>	<p>According to Rainmaker, over 70 per cent of retail superannuation assets in Australia are held via platforms.</p> <p>According to Lane Clark Peacock, UK members may be paying up to 20 basis points per annum to access an active fund through a platform when compared with the cos of going direct to the fund manager.</p> <p>According to the UK Financial Conduct Authority, platforms add 20-90 basis points to costs.</p>	<p>Disclosure for superannuation held via a platform understates fees and costs paid by the member.</p> <p>ASIC admits it would be misleading to compare the fees and costs of platforms and non-platform superannuation funds.</p> <p>The compounding effect of higher costs over long term reduces retirement incomes for members.</p>
<p>The (unimplemented) dashboard regime for</p>	<p>While the Government amended the regime to require dashboards for</p>	<p>Members who hold their superannuation via a platform will</p>



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<p>choice products/investment options will not include platforms.</p>	<p>products/investments held via a platform, platforms themselves will be exempt.</p>	<p>not have a dashboard for it, compounding an existing difficulty comparing their returns, fees or costs with MySuper products.</p>
<p>APRA does not collect or publish statistics on platforms equivalent to the comprehensive statistical collection derived from the MySuper reporting standards.</p>	<p>APRA deferred collecting data for choice products/investment options for consideration during the development of the requirements for choice dashboards.</p>	<p>Members rely on APRA, employers, advisers, Government, researchers, commentators and trustees to analyse the characteristics and performance of superannuation held via a platform. Lack of data hampers this.</p>
<p>No requirement to produce a shorter PDS for legacy products.</p>	<p>According to Rice Warner, around 30% of personal superannuation assets are held in legacy products.</p>	<p>This makes it difficult for members in legacy products to compare the performance, fees or costs of the product with a contemporary product, understand the exit costs and assess whether they would be better off switching to a contemporary product.</p>
<p>The (unimplemented) dashboard regime for choice products/investment options will not include legacy products.</p>	<p>Rice Warner found fees and costs for legacy products are on average more than double those for contemporary products.</p> <p>UK Independent Project Board found £26 billion in legacy pension schemes had investment manager fees above 1%, with nearly £1 billion exposed to fees over 300 basis points per annum.</p>	<p>Members who hold legacy superannuation products will not have a dashboard, making it difficult to compare their returns, fees or costs with contemporary products.</p>
<p>APRA does not collect or publish statistics on legacy products equivalent to the comprehensive statistical collection derived from the</p>	<p>APRA deferred collecting data for choice products/investment options for consideration during the development of the requirements for choice dashboards.</p>	<p>Members rely on APRA, employers, advisers, Government, researchers, commentators and trustees to analyse the characteristics and performance of legacy products. Lack of data hampers this.</p>



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<p>MySuper reporting standards.</p>		
<p>Conflicted remuneration is banned for most of the financial services industry, but there is an exemption for advice about retail life insurance.</p>	<p>In 2014 ASIC found more than one third of advice about retail life insurance reviewed did not comply with the law.</p> <p>96% of non-compliant advice was given by advisers paid an upfront commission.</p>	<p>Consumers are at significant risk of being recommended a life insurance policy that is not in their best interests.</p> <p>Industry and Government proposals to address this do not include banning commissions.</p>