

21 December 2023

Gideon Holland
General Manager, Policy
Australian Prudential Regulation Authority
Level 12, 1 Martin Place
Sydney NSW 2000
Via email: superannuation.policy@apra.gov.au

Dear Gideon

RE: STRATEGIC PLANNING AND MEMBER OUTCOMES: PROPOSED ENHANCEMENTS – CONSULTATION

The FSC welcomes the opportunity to consult on draft Prudential Standard SPS 515: Strategic Planning and Member Outcomes (**The Draft Standard**) and the associated draft Prudential Guidance, SPG 515 Strategic Transfer Planning (**SPG 515**) and SPG 516: Business Performance Review (**SPG 516**). As well as the retiring of Circular III.A.4 Sole Purpose Test (**the Circular**).

The FSC and its members are supportive of the aims of the Draft Standard to uplift the way that funds consider their operations and how it may impact member outcomes. The FSC notes several areas where further guidance is warranted, particularly for funds that operate an investment platform product, which may have different operating environments and considerations than other superannuation funds.

The FSC is also supportive of the retirement of the Circular provided that the Government implements Recommendations of the Quality of Advice Review (**the QAR**) which calls for greater certainty to be given to superannuation funds about their ability to provide financial advice under section 62 of the Superannuation Industry (Supervision) Act 1993 (Cth) (**the SIS Act**).

About the Financial Services Council

The FSC is a peak body which sets mandatory Standards and develops policy for more than 100 member companies in one of Australia's largest industry sectors, financial services. Our Full Members represent Australia's retail and wholesale funds management businesses, superannuation funds, and financial advice licensees.

The financial services industry is responsible for investing more than \$3 trillion on behalf of over 15.6 million Australians. The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange and is one of the largest pools of managed funds in the world.

Summary of Recommendations

1. The FSC supports the retiring of the Sole Purpose Test Guidance Circular provided that the recommendations of the Quality of Advice Review that support greater legislative clarity for funds around the deduction of advice fees from superannuation balances are implemented.

2. The FSC is supportive of the Draft Standard's objective to ensure that funds' strategic plans are appropriately focussed on member outcomes. The FSC is also supportive of the consideration of the retirement income covenant obligations, but recommends APRA provide clarification on what types of evidence-based assessments of beneficiary needs would be acceptable without providing personal advice.
3. APRA provide clarity as to the requirement that the business plan be informed by the annual outcomes review and that the funds retirement income strategy, continues to need to be reviewed every three years. The FSC also recommends APRA provide further details on its expectations of the review informing the business plan, including whether the 'appropriateness' review is the same as the review of the strategy itself.
4. APRA provide clarity as to the application of paragraph 16 in respect of personal rights held by RSE Licensees. Specifically, amend paragraph 16 by adding the introductory words "This paragraph does not apply in respect of an RSE licensee's setting and charging of fees in its personal capacity."
5. APRA provide clarity as to the meaning of financial interests in the context of balancing fees with member best financial interests. Specifically, does APRA expect an RSE Licensee to measure the impact of fees on the financial interests of beneficiaries outside of measuring investment returns and the competitiveness of fees against similar competitor products. Also, for APRA to provide clarity on setting fees 'prudently and transparently'.
6. APRA provide clarity as to how funds should measure the impact of fees in a platform product situation where members have made active choices about the fees they pay.
7. APRA remove guidance in relation to, demonstrating ongoing sustainability, and that fees are to be charged validly and equitably, in order to pay dividends.
8. APRA provide clarity on the term 'excessive' and 'other avenues' in relation to building a financial contingency amount, including the use of examples to assist in the understanding of what 'other avenues' are expected to be explored, the basis on which they can be considered exhausted and how reaching this conclusion is consistent with a trustee's best financial interest duty.
9. APRA provide guidance as to what circumstances it might be appropriate to engage an external review of the business performance plan.
10. APRA provide clarity as to the interaction between the Annual Outcomes Assessment and the Business Performance Review, specifically if it is appropriate to use the metrics from the Annual Outcomes Assessment, which are substantially the same, or if a new assessment needs to be undertaken.
11. APRA provide further guidance on the cohort analysis of platform products where aggregating a group of members may be difficult.
12. APRA provide further clarity about what factors should be considered by platform providers when setting internal benchmarks and what sort of external benchmarks are expected to be used to measure outcomes for members.
13. APRA provide further detail on the guidance for the comparison of choice options being based on their performance test assessment and whether APRA expects this on options that have not been tested, particularly for choice options on a platform.

14. APRA provide further guidance on where there is a reasonable basis for maintaining closed products, such as in the instances where beneficiaries may face adverse tax consequences, outside the control of the fund, which outweigh the benefits of the beneficiary transferring.
15. APRA provide more detail in the Draft Standard on the notice expected to be given to a Trustee by APRA before cancelling a MySuper authorisation to allow for a smoother transfer of MySuper assets.
16. APRA provide clarity on the relationship between the proposed MySuper asset transfer planning requirements of the Draft Standard and the recovery and exit plans required by Prudential Standard CPS 190 Recovery and Exit Planning.
17. APRA provide more comprehensive datasets to allow RSE Licensees to perform assessments efficiently and in a timely manner.

Retiring Sole Purpose Test Guidance

The FSC is supportive of APRA's proposal to retire the Circular, provided that the appropriate recommendations of the Quality of Advice review are implemented by Government. Without current and clear legal boundaries and principles to align to for the sole purpose test, Trustees will generally take a conservative approach.

This creates the need for a framework for Trustees and licensees that is both not unduly prescriptive so as to run against the objective of allowing funds to meet individual needs impeded by a one size fits all approach, as well as equipped with appropriate safeguards to ensure what is collectively charged for is done so in accordance with clear principles and protects consumers.

Acknowledging that this is a legislative matter, the FSC has sought the implementation of Recommendation 7 of the Quality of Advice Review to provide greater legislative certainty as to the deduction of advice fees from superannuation balances. The FSC is engaging with Treasury as it consults on Exposure Draft legislation implementing this recommendation.

Recommendation 1

The FSC supports the retiring of the Sole Purpose Test Guidance Circular provided that the recommendations of the Quality of Advice Review that support greater legislative clarity for funds around the deduction of advice fees from superannuation balances are implemented.

Strategic Objectives and Member Outcomes

The FSC is supportive of the Draft Standard's objective to ensure that funds' strategic plans are appropriately focussed on member outcomes, including consideration of the obligations of the retirement income covenant. FSC members are committed to continual improvement to ensure the best possible outcomes for their members during both the accumulation and retirement phases.

Paragraph 9 of draft SPG 515 proposes an expectation that Trustees determine outcomes that reflect evidence-based assessments of the needs of beneficiaries approaching retirement. The FSC queries what APRA would accept as an appropriate evidence-base for the assessment without the Trustee providing personal advice to members.

The FSC also welcomes further guidance from APRA in relation to the application of the Draft Standard and Guidance on platform products, which are a lot more sophisticated in their use and require further decisions by beneficiaries or their advisers compared to Trustee-directed or MySuper products.

Recommendation 2

The FSC is supportive of the Draft Standard's objective to ensure that funds' strategic plans are appropriately focussed on member outcomes. The FSC is also supportive of the consideration of the retirement income covenant obligations, but recommends APRA provide clarification on what types of evidence-based assessments of beneficiary needs would be acceptable without providing personal advice.

Business Planning and Financial Projections

Review of the Retirement Income Strategy

Paragraph 12 of the Draft Standard proposes to require that the business plan be informed by an annual review of the 'appropriateness' of the fund's retirement income strategy (**RIS**). However, as per guidance provided by APRA in relation to the implementation of the retirement income covenant, the RIS should be reviewed every three years, with outcomes reviewed annually.¹ Clarity is sought as to APRA's expectation with regard to this requirement.

The FSC also seeks further guidance on what the proposed review in paragraph 19 of draft SPG 515 should cover and what measures the RIS can be measured against.

Recommendation 3

APRA provide clarity as to the requirement that the business plan be informed by the annual outcomes review and that the funds retirement income strategy, continues to need to be reviewed every three years. The FSC also recommends APRA provide further details on its expectations of the review informing the business plan, including whether the 'appropriateness' review is the same as the review of the strategy itself.

Financial Resource Management

Setting Fees

The Draft Standard seeks to ensure that RSE Licensees maintain a prudent approach to financial management, with requirements relating to fee setting, managing reserves and fund expenditure. Specifically, Paragraph 15 of the Draft Standard requires that a fund must have a robust approach to the management of the financial resources available to support achieving the outcomes sought for beneficiaries. This is defined in Paragraph 25 of SPG 515 as adopting a rigorous process that clearly measures the impact of fees on the financial interests of beneficiaries. Paragraph 16 of the Draft Standard also proposes to require Trustees to set fees prudently and transparently.

The FSC has concerns the Draft Standard does not have regard to the differences among Trustees' rights arising from their respective trust deeds and, as a consequence, proposes restrictions on Trustees' rights which are beyond APRA's power to impose.

The SIS Act requires trust deeds maintain consistency by imposing specific covenants and other requirements that must be included. However, outside of these requirements, each RSE prepares its trust deed to reflect its individual circumstances, reflecting the fact RSEs operate with an appropriate

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APRA. (2022). *Implementation of the retirement income covenant* ([Link](#)).

level of freedom to innovate, compete, and conduct “business” (as recognised in the SIS Act, e.g., s52(3)). Differences exist among trust deeds as to how they express the RSE licensee’s rights with respect to remuneration, including fees. As a result, RSE Licensees may have a right to receive fees which does not require the exercise of any power or performance of any duty the RSE Licensee has as a Trustee of the RSE. The FSC made submissions related to this point in March 2022, supported by expert legal advice from Herbert Smith Freehills (**HSF**)².

The Draft Standard is expressed to apply in respect of an RSE licensee’s “setting” and “charging” of fees. It does so without distinction between an RSE licensee’s rights to set and charge fees which may be personal (i.e. not in relation to the affairs of the RSE) or in the exercise of any power or performance of any duty as Trustee (i.e. in relation to the affairs of the RSE). The FSC notes that the Draft Standard cannot regulate an RSE licensee’s personal rights in respect of fee setting and charging as the SIS Act does not empower APRA to do so. It does, however, allow APRA to determine prudential standards relating to “prudential matters” which extends to “the affairs of the registrable superannuation entity” (s34C(4)(a)). The Draft Standard should be clarified to note that it does not relate to the RSE licensee’s personal rights. More specifically, paragraph 16 should be amended by adding the introductory words “This paragraph does not apply in respect of an RSE licensee’s setting and charging of fees in its personal capacity.”

In making this recommendation, the FSC notes the significance of competition among RSEs (as envisaged by s8 of the *Australian Prudential Regulation Authority Act 1998* (Cth)). Competition is supported by members having access to various sources of standardised information relating to the performance of RSE’s products, including as calculated after the deduction of fees (e.g. performance tests and heatmaps), and being able to switch their investments to other investment options or roll over their investment to another RSE easily.

Recommendation 4

APRA provide clarity as to the application of paragraph 16 in respect of personal rights held by RSE Licensees. Specifically, amend paragraph 16 by adding the introductory words “This paragraph does not apply in respect of an RSE licensee’s setting and charging of fees in its personal capacity.”

Further to the above, the FSC seeks clarity as to the meaning of financial interests in this context, specifically, does APRA expect an RSE Licensee to measure the impact of fees on the financial interests of beneficiaries outside of measuring investment returns and the competitiveness of fees against similar competitor products. Further guidance is required as to what other measurements might be monitored if this is the case. The FSC also seeks further guidance on defining what is expected from APRA in setting fees ‘prudently and transparently’.

Recommendation 5

APRA provide clarity as to the meaning of financial interests in the context of balancing fees with member best financial interests. Specifically, does APRA expect an RSE Licensee to measure the impact of fees on the financial interests of beneficiaries outside of measuring investment returns and the competitiveness of fees against similar competitor products. Also, for APRA to provide clarity on setting fees ‘prudently and transparently’.

² The FSC refers especially to section 7.3 of its submission ([Link](#)) and section 4 (second bullet) of the HSF advice ([Link](#)).

In the context of platform enabled, or other choice products, members are able to choose their products based on, among other things, the fees that they might pay. The FSC submits that it may be difficult for funds to adequately measure the impact of fees on the financial interests of beneficiaries if individuals have chosen products (and their fees) based on their own personal financial approaches.

FSC members are committed to providing appropriate value in the fees they set for members, and therefore clarity is sought as to how funds should approach valuing this in circumstances where fund members are making active choices about their products.

Recommendation 6

APRA provide clarity as to how funds should measure the impact of fees in a platform product situation where members have made active choices about the fees they pay.

Management of other financial resources

Paragraph 20 of the Draft Standard proposes to require Trustees maintain a sound financial position, with Paragraph 31 of draft SPG 515 linking this to the payment of dividends and whether the fees are charged validly and equitably.

The FSC submits that the *Corporations Act 2001* (Cth) governs solvency requirements when paying a dividend and, therefore, is not necessary to be included in APRA's guidance in SPG 515 which may cause confusion. Further to this, the validly and equitable charging of fees is not related to dividends and creates further confusion when linking it to a Trustee's right to charge a fee to pay dividends.

Recommendation 7

APRA remove guidance in relation to, demonstrating ongoing sustainability, and that fees are to be charged validly and equitably, in order to pay dividends.

Paragraph 32 of draft SPG 515 states APRA's expectation is that the amount generated by charging a fee would not be excessive. It also describes that APRA expects that all other avenues are exhausted before building the fee and that these avenues must be clearly evidenced.

The FSC seeks further guidance on what is meant by 'excessive' in the context of this guidance.

The FSC also seeks guidance on what is meant by 'other avenues' and whether APRA specifically expects an RSE licensee to first endeavour to raise capital from shareholders, including sponsoring organisations, before resorting to levying additional fees on consumers that may not in consumers' best financial interests.

The industry would benefit from clarity from APRA on when the regulator believes it is in members best financial interests and consistent with a trustees' fiduciary obligations to decide an RSE licensee should build a financial contingency amount through fees levied on members, rather than from capital provided by shareholders or sponsoring organisations.

The FSC would also welcome insight into APRA's expectations of an RSE licensee around making a request for additional capital from shareholders and/or sponsoring organisations, and the basis on which a trustee can conclude this 'other avenue' has been diligently explored and exhausted. Clear and specific examples from APRA of what a trustee is expected to consider and whether the request for additional capital and response should be transparent would be valuable.

Recommendation 8

APRA provide clarity on the term ‘excessive’ and ‘other avenues’ in relation to building a financial contingency amount, including the use of examples to assist in the understanding of what ‘other avenues’ are expected to be explored, the basis on which they can be considered exhausted and how reaching this conclusion is consistent with a trustee’s best financial interest duty.

Business Performance Review

Paragraph 25 of the Draft Standard states that an RSE Licensee must, on an annual basis, review its performance in achieving its strategic objectives, informed by the RSE licensee’s monitoring of key performance indicators and triggers. Paragraph 8 of SPG 516 contemplates that a fund might need to engage an external expert to provide an independent view of the delivery outcomes but that the engaging of this external expertise should be justifiable. FSC members are seeking clarity around what circumstances APRA might foresee as appropriate in this context.

Recommendation 9

APRA provide guidance as to what circumstances it might be appropriate to engage an external review of the business performance plan.

Scope of the Business Performance Review

Paragraph 26 a) of the Draft Standard requires a fund’s Business Performance Review (**BPR**) to assess and demonstrate, at a minimum, whether the strategic objectives of the fund are being met, including an explanation of what has driven this assessment. Paragraph 10 of SPG 516 lists a number of factors that APRA expects an RSE Licensee to cover in the BPR.

Noting that this list is fundamentally the same as the existing SPG 516 guidance on reporting of the Annual Outcomes Assessment (**AOA**), clarity is sought as to whether it is appropriate to use the same assessment for the BPR as the AOA or if a new assessment must be undertaken.

The FSC also notes that the provided list captures requirements of other parts of the prudential framework, the investment strategy in SPS 530 and insurance strategy in SPS 250, the FSC recommends that the list could be streamlined through the removal of the duplication in the prudential framework as per APRA’s modernising the prudential architecture project.

Recommendation 10

APRA provide clarity as to the interaction between the Annual Outcomes Assessment and the Business Performance Review, specifically if it is appropriate to use the metrics from the Annual Outcomes Assessment, which are substantially the same, or if a new assessment needs to be undertaken.

Cohort Analysis

Paragraph 26 b) i) of the Draft Standard requires a fund’s BPR to assess and demonstrate, at a minimum, the outcomes achieved for beneficiaries, having regard to different cohorts of beneficiaries. The guidance contained in Paragraph 12 and Table 1 of SPG 516 note that, for platform products, this should be achieved by grouping together a number of investment options to form a choice member cohort. This should be based on, for example, asset class, investment strategy, life stages, and/or how fees are set and charged.

The FSC submits that this might be fundamentally difficult given the main attraction of a platform product over other products is complete flexibility of choosing investment options. Further clarity is required from APRA about how it expects funds to measure platform product members who are not necessarily a homogenous group.

Recommendation 11

APRA provide further guidance on the cohort analysis of platform products where aggregating a group of members may be difficult.

Internal and External Benchmarks

Paragraph 26 b) ii) of the Draft Standard requires a fund's BPR to assess and demonstrate, at a minimum, the outcomes achieved for beneficiaries, having regard to objective internal and external benchmarks. Guidance provided in Table 2 of SPG 516 outlines factors funds should consider when setting internal benchmarks. These factors, however, do not necessarily apply to a platform product due to those product's emphasis on choice and flexibility.

Further guidance is required as to what APRA would consider relevant factors for platforms when setting internal benchmarks and what types of external benchmarks are expected to be used to measure outcomes for members.

Recommendation 12

APRA provide further clarity about what factors should be considered by platform providers when setting internal benchmarks and what sort of external benchmarks are expected to be used to measure outcomes for members.

Annual outcomes assessment

Comparing choice products (that are not retirement income products)

Paragraph 41 of SPG 516 indicates that for choice products, comparison should be based on whether the product's investment options passed or failed the performance test regardless of whether all options are subject to the test.

Further clarity is required as to APRA's expectations in relation to this guidance, such as whether all choice options should be compared based on their performance test assessment, irrespective of whether they are tested, particularly for choice options on a platform where there can be hundreds of choice options.

Recommendation 13

APRA provide further detail on the guidance for the comparison of choice options being based on their performance test assessment and whether APRA expects this on options that have not been tested, particularly for choice options on a platform.

Remedial actions and transfer planning

Additional expected actions where a product fails the legislated performance test

Paragraph 56 of the draft SPG 515 outlines APRA's expectations for closed products due to failing the performance test. The Trustee is expected to demonstrate a reasonable basis for maintaining the closed products given that alternative products may be available within the Fund, or offered by

other funds, with potentially better outcomes for beneficiaries.

The FSC submits that there are some instances where there is a reasonable basis for maintaining a closed product. There are factors outside of the fund, such as capital gains tax consequences, where beneficiaries may face adverse financial impacts as a result of a transfer that far outweigh any potential improved performance.

Recommendation 14

APRA provide further guidance on where there is a reasonable basis for maintaining closed products, such as in the instances where beneficiaries may face adverse tax consequences, outside the control of the fund, which outweigh the benefits of the beneficiary transferring.

MySuper assets transfer plans

The Draft Standard is proposing to require Trustees to put a plan in place to transfer MySuper assets when the Trustee is notified their MySuper product authorisation may be cancelled by APRA, in a time frame specified by APRA.

FSC's members have flagged that this would only be workable in situations where the notice from APRA is part of a broader issue, with ongoing engagement from APRA, due to the amount of time it would take for the Trustee to setup the transfer. From initiation to execution, it can take up to 18 months for a Trustee to transfer their MySuper assets.

The FSC submits that the process for APRA cancelling a MySuper product authorisation be part of ongoing engagement with APRA to give the Trustee sufficient notice to transfer MySuper assets prior to cancelling the authorisation. The Draft Standard and associated guidance would benefit from detailing these timeframes to ensure the Trustee can ultimately meet the SIS Act requirements.

Recommendation 15

APRA provide more detail in the Draft Standard on the notice expected to be given to a Trustee by APRA before cancelling a MySuper authorisation to allow for a smoother transfer of MySuper assets.

Paragraph 12 of the draft standard requires Trustees to have a MySuper asset transfer plan to be ready when requested by APRA. CPS 190 also has requirements for Trustees to have a recovery and exit plan developed and maintained.

Further guidance is required on how these plans interact with each other and what APRA's expectations are in relation to how the MySuper asset transfer plan is distinct from the recovery and exit plan or whether a plan that covers the requirements of both plans can be established.

Recommendation 16

APRA provide clarity on the relationship between the proposed MySuper asset transfer planning requirements of the Draft Standard and the recovery and exit plans required by Prudential Standard CPS 190 Recovery and Exit Planning.

APRA Data

The FSC welcomes APRA's comments that "access to publicly available data on product and fund performance is key to meeting the outcomes assessment requirements" and recommends that

APRA release all relevant data, at the appropriate level of granularity, in order for RSE Licensees to be able to perform their assessments in an efficient and timely manner. In particular, the publication of APRA Heatmaps in December has delayed finalisation of the AOAs.

This includes ensuring that the replacement for APRA's Heatmaps is provided as early as possible after 30 June every year and ensuring that richer datasets, for example covering longer investment performance periods, are made available to RSE Licensees.

Recommendation 17

APRA provide more comprehensive datasets to allow RSE Licensees to perform assessments efficiently and in a timely manner.

If you have any questions about this submission, please contact me.

Yours sincerely



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