Re: Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry

Written Submissions of the Australian Prudential Regulation Authority (APRA) in response to specific findings

Round 5: Superannuation

A. Introduction

1. These submissions set out APRA's position in relation to certain specific findings which Counsel Assisting contend are open to the Commissioner, as set out in Counsel Assisting's Module 5 Closing Submissions (**Closing Submissions**) of 24 August 2018, as well as certain other observations contained in the Closing Submissions.

B. APRA Case study (S.1)

2. The Closing Submissions on the APRA Case study (S.1) do not propose specific or identify available findings in respect of APRA. Rather, they identify general and policy questions, collected in Part T (Policy and General Questions), [825].[1] Accordingly, APRA's response to the APRA Case study, including aspects of the evidence of Mrs Rowell, will be addressed in the policy submissions due on 21 September 2018.

3. However, there are a small number of matters in respect of the Closing Submissions on the APRA Case study which should briefly be noted here, and before the main policy submissions are due.

4. First, various materials from the inquiries by the Commission and set out in the Closing Submissions have identified serious questions of compliance by certain trustees (and directors) with the SIS Act. APRA is reviewing this material to identify further steps to be taken.

5. In the case of the two funds addressed in the APRA Case Study (S.1), (namely, IOOF Investment Management Ltd/Questor (**IOOF**); and Colonial First State Investments

[1] But noting also, C.3 [176], G.3 [326]-[329], J.3 [474], R.2 [695], S.3 – S.5 [752]-[824].

Limited (**CFSIL**), just as the Commission has identified concerns, so did APRA at the time. It raised these with the entities and required responses. APRA achieved outcomes which, on the information known at the time, were considered to be in the long-term best interests of members. However, the Commission has brought additional information to light, some of which appears inconsistent with information previously provided to APRA. APRA is examining these issues further to consider whether additional action is necessary.

6. The fact that no litigation was commenced does not mean that further remediation and proceedings are foreclosed. APRA actively considered taking proceedings in the IOOF case.

7. APRA accepts that there are legitimate questions as to whether a decision to litigate may achieve a result with wider deterrence effect as indicated in Counsel Assisting's Submissions. This issue will be the subject of further submissions by APRA on the policy and general questions posed by the Commission following Round 5.

8. In APRA's view, having the power to take litigation or other action is important to achieve the necessary changes and responses from entities without necessarily having to take that action in all cases. That is, the 'threat' of potential action facilitates the achievement of appropriate outcomes, which is APRA's focus. Again, this matter will be taken up further in APRA's submissions on policy and general questions.

9. Further short submissions in respect of IOOF and CFSIL are taken up below.

10. Second, at [729] of the Closing Submissions, Counsel Assisting submits, in respect of APRA's Prudential Standards setting out principles-based objectives, "that establishing a breach of a standard – except in the most obvious way, such as failing to have a Fit and Proper policy at all – is likely to be very difficult."

11. APRA's principles-based, outcomes-focused[2] approach is reflected in the Prudential Standards. APRA's approach is longstanding and consistent with the Government's 'Statement of Expectations – Australian Prudential Regulation Authority' which sets out that the "Government's preference is for principles-based regulation that identifies the desired outcomes, rather than prescribing how to achieve them."[3] To that end, the Standards are drafted to provide a framework for prudent conduct and outcomes. They

2 Counsel Assisting's Closing Submissions, [151] – [153]. [393.5], [393.6].
3 Counsel Assisting's Closing Submissions, [151] – [153], [393.5], [393.6].

do not dictate the precise manner by which that conduct and those outcomes will be achieved.

12. Importantly, the Prudential Standards do not displace, and are not intended to operate as a substitute for, the obligations and covenants that are expressly imposed on trustees by the SIS Act.

13. APRA will further address the role of Prudential Standards in its submissions on the Policy and General questions.

C. Common theme: Fees for no service and fees charged to deceased members

14. Counsel Assisting has proposed various findings of possible breaches of s 52(2)(b), s 52(2)(c), s 52(2)(d)(i) and (iii) and s 62 of the SIS Act in relation to the charging of fees or commissions for no service, and of possible breaches of s 52(2)(c) and s 62 of the SIS Act in relation to the charging of fees to deceased members.[4]

15. APRA agrees that the charging of fees for no service or the charging of fees to deceased members is unacceptable. However, what the most appropriate response is will depend on the context of the particular event. Where for example an RSE licensee itself identifies an instance of inappropriately charged fees, reports it promptly to APRA and engages with the relevant regulator (whether that be ASIC or APRA) in developing a remediation plan, APRA's focus will properly be on whether the remediation plan is sufficient and whether the RSE licensee has systems in place designed to prevent future breaches. On the other hand, where RSE licensees do not promptly acknowledge and remedy issues, APRA can rely on the possible breaches of s 52 or s 62 to press the RSE licensee to take appropriate remedial and preventative action.

16. The issue of 'fees for no service' impacts on the regulatory spheres of both ASIC and APRA. The ultimate causes of action for the misconduct identified may be different as between ASIC and APRA, but they will have the same factual substratum. APRA and ASIC share information and coordinate their activities in relation to the issue of fees for no service. APRA does not agree that it is incumbent on it to act earlier or separately from ASIC in such matters, when ASIC action may be achieving the common

4 Counsel Assisting's Closing Submission, [151] – [153], [393.5], [393.6].

regulatory objective of appropriate remediation to affected members and/or where there may be other actions in train.

D. Common theme: Grandfathering of commissions

17. Counsel Assisting has proposed findings of possible breaches of s 52(2)(c), s 52(2)(d)(i) and s 52(2)(d)(iii) of the SIS Act[5] in relation to the charging of commissions that were permitted to be "grandfathered" after the introduction of the Future of Financial Advice (**FOFA**) reforms.[6]

18. APRA agrees that the question of 'grandfathered commissions' presents a particular issue for superannuation trustees under the SIS Act, including in its historical and statutory context. In particular:

    (a) APRA agrees (as the FOFA reforms and *Corporation Act 2001* provisions noted below also identify) that a person relevantly giving financial advice in connection with superannuation must have regard to the 'best interests' duties in that Act;

    (b) APRA also agrees that a Superannuation Trustee must have regard to its duties pursuant to s62 of the SIS Act (to only maintain the fund for the purposes identified), as well as s52 (the 'bests interests' obligation);

    (c) it is also the case that, whereas the FOFA reforms and legislative policy has banned commissions on the one hand; it has on the other expressly permitted their continuation if they were part of the arrangements for advisors in place before also specified the "application day" 1 July 2013.[7] The transition provision reflected the complexities involved in unwinding contractual arrangements and the flow on issues and impacts this may have.

19. Overall, APRA takes the view that:

    (a) there has been an express legislative policy decision which permits historical commission arrangements to continue in the superannuation context, subject to the best interests test. Although there are legislative indications that grandfathered commissions were to be phased out over time, there is no express legislative requirement to that effect. In the absence of additional circumstances indicating a breach of the best interests test, it could be, at the very least, inappropriate, for a regulator to sanction an RSE Licensee for actions allowed by law;

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5 Counsel Assisting's Closing Submissions, [151] – [153]; [393.5]; [393.6].

6 *Corporations Amendment (Future of Financial Advice) Act 2012* (Cth) and *Corporations Amendment (Further Future of Financial Advice Measures) Act 2012* (Cth).

7 See eg, s1528(4) *Corporations Act 2001* (Cth).

(b) it cannot be assumed that a product which contains commissions can be replaced with one that does not have them; or that if commissions are cancelled the product would still be viable or available;

(c) in determining what to do with or about commissions the RSE Licensee must actively consider its duties and whether the resulting product is consistent with members' best interests;

(d) in considering member best interests, it is the overall structure of the arrangement that needs to be considered including with respect to the individual member, the members as a group, and the ongoing and future viability and sustainability of the superannuation fund.[8]

20. APRA does not accept as a blanket proposition that grandfathered commissions looked at in the overall context of members' best interests are necessarily contrary to those interests based on the current state of the law, the current structure and operations of most RSE Licensees and the superannuation industry as a whole.

21. APRA agrees, however, with the observation of Mr Kell made in oral evidence to the Commission that:[9]

> *We can and should look at individual cases, but I think for the interests of consumers in the financial system as a whole, it would be highly desirable to have this dealt with at a policy level.*

22. The observations regarding the grandfathering regime made in a Background Paper published by the Commission also discuss the complexity of the arrangements and the legislative policy issues.[10]

E. Common theme: Transition of Accrued Default Amounts (ADAs)

23. A number of case studies explored the actions of RSE Licensees in relation to the transition of Accrued Default Amounts (**ADAs**) as part of the implementation of the MySuper regime. The legislative framework for this transition was laid down in SIS Act s387 and required that transfer of ADAs be completed by 1 July 2017. *Prudential Standard SPS 410 MySuper Transition* was made to set out minimum processes for

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8 See Transcript, Helen Rowell, 17 August 2018, at 519415-19; 5194:47-5195:5; and 5195.21-25 ("...you need to look at the overall structure of the arrangements and best interest needs to be assessed at a range of levels, for the RSE as a whole, for different cohorts of members within the – within the RSE and – and form an overall view, part of which is net returns costs and other features but it's also about the ongoing viability and sustainability of the RSE itself.")

9 Transcript, Peter Kell, 17 August 2018, 5258.

10 The Treasury, *Background Paper 24: Submission on key policy issues*, 13 July 2018, 157 174-182 [39]-[40].

RSE licensees in relation to the transition and *Prudential Practice Guide SPG 410 MySuper Transition* was also issued by APRA and included reference to an expectation that RSE Licensees will have regard to the best interests of members when setting transition plans.

24. As with the situation outlined in section D above, legislative provisions were in place with which RSE Licensees were required to comply, in this case a statutory timeframe in which to effect the transition. Alongside this requirement RSE Licensees needed to have regard to the best interests of members as part of their decision making on the various changes needed to give effect the new regime (which may have included operational, product, system changes). APRA does not accept as a blanket proposition that effecting changes within the statutory timeframe is inconsistent with acting in the members' best interest or that (in the absence of additional circumstances) it would be appropriate for APRA to sanction a trustee for actions allowed by law.

F. NULIS Nominees (Aust.) Ltd, AMP Superannuation Ltd, NM Superannuation Pty Ltd, Suncorp Portfolio Services Limited (SPSL)

25. The issues that were explored in the course of the Nulis Nominees and AMP/NM Superannuation case studies were not specifically addressed in the examination of the APRA witnesses in any detail. However, APRA has been concerned by some of the oral and documentary evidence that emerged in the course of those case studies, in particular regarding how the individuals giving evidence saw their roles, the arrangements with related parties and the roles of the RSE licensee generally. It is APRA's intention to carefully evaluate the evidence that has emerged, as well as the submissions of Counsel assisting (and any submissions that may be made by the relevant entities), against the information and representations previously provided by those entities to APRA, and to seek such further information from each of the entities as may be required to determine the relevant facts, and the need for further action by APRA.

26. In relation to the SPSL case study, material emerged regarding the use of a taxation refund to pay a related party. APRA is considering this material further. Based on the facts presented, APRA's prima facie view is that aspects of the arrangement referred to may not be consistent with the requirements of *Prudential Standard SPS 231*

Outsourcing.[11] APRA proposes to undertake further detailed inquires on this matter before determining what if any further action may be appropriate.

G. IOOF Investment Management Limited

Use of general reserve

27. Counsel Assisting has identified serious concerns in relation to use of the Portfolio Service Retirement Fund (**TPS**) general reserve to partly compensate TPS members; giving priority to the interests of IDPS-like members in applying the NCS settlement money, and giving priority to the interests of Questor by not replenishing the reserve from Questor's own funds.

28. APRA agrees that the general reserve is an asset of the fund, although it is not allocated to individual members.[12] APRA had also been concerned as to the failure to adequately deal with the conflicts that had arisen for the trustee and properly prioritise the interests of TPS members. APRA had identified these concerns and challenged Questor on its approach[13].

29. APRA accepts that it was open to APRA to have commenced proceedings against Questor in respect of the misuse of member reserves. Whether to commence such proceedings was given careful consideration by APRA at the time.

30. For reasons explained in the evidence of Stephen Glenfield, that is that APRA did not have the power to direct that the reserve be replenished, that the Questor reserves policy permitted the use of the general reserve to compensate members and the members were not directly disadvantaged as affected members were compensated[14], the decision was made not to pursue a court proceeding in respect of the use of the reserve, but rather to redouble efforts to get necessary governance structures in place to adequately and effectively address the management of conflicts of interest for the long term. Mr Glenfield's evidence was that the failure to prioritise the interests of TPS

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11 As submitted in the Closing Submissions, [289.3].

12 Counsel Assisting's Closing Submissions, [228.1]; [713] Transcript, Stephen Glenfield, 17 August 2018, 5215.

13 Counsel Assisting's Closing Submissions, [218]; Transcript, Christopher Kelaher, 10 August 2018, 4643; Exhibit 5.116.18, 12 December 2016, Exhibit CK-2 Tab 18, 5. APRA Letter dated 12 December 2016; Counsel Assisting's Closing Submissions [220] Exhibit 5.116, Witness statement of Christopher Kelaher, 26 July 2018, Exhibit CK-2 - Tab-18

14 Counsel Assisting's Closing Submissions, [719] Transcript, Stephen Glenfield, 17 August 2018, 5212 – 5213, Witness statement of Stephen Glenfield, 14 August 2018, 24 [109].

members was a symptom of the way the structure was working and it was important to get that structure right for the long term.[15] As Mr Glenfield stated in evidence:

> *in terms of the long-term outcome for the members of IOOF, the most important thing in my mind was to get the structure right and the governance and conflicts management right.*

31. APRA acknowledges Counsel Assisting's submission that commencing court proceeding against Questor/IOOF might have more effectively operated as a deterrent to all RSE licensees.[16] APRA will address further the issue of strategic litigation as a tool for achieving general deterrence in its submissions on policy issues to be submitted by 21 September 2018.

32. While APRA did not commence court proceedings in respect of the use of the TPS reserve, APRA submits that its intensified focus on the IOOF structural issues has been effective in achieving necessary changes to better protect interests of the members in the long term.

33. On 19 June 2018, APRA wrote to IOOF stating APRA's view that the following "minimum governance and structural changes are necessary".[17]

> *1. Splitting of the RSE Licence (RSEL) and RE Licence functions into distinct legal entities;*
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> *2. Establishment of a dedicated business function to support the AREs;*[18]
>
> *3. Appointment of an Independent Chair to lead a majority Independent Board for the AREs (with independence to include independence from the rest of the group);*
>
> *4. Consolidation of RSELs and RSEs post-acquisition of ANZ's P&I Business.*

34. On 14 August 2018, IOOF responded by letter to APRA stating that IOOF endorsed APRA's suggested changes numbers 1, 3 and 4.[19] APRA does not regard the matter as closed and is pursuing further action from IOOF.

Questor reserves policy

35. Counsel Assisting has observed that the Questor reserves policy (being one of the matters considered by APRA in determining not to bring a Court proceeding) had been

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15 Transcript, Stephen Glenfield, 17 August 2018, 5220:36 5221:3.
16 Counsel Assisting's Closing Submissions [814].
17 Exhibit 5.182.13 (APRA.0002.0007.3219), 19 June 2018, letter from APRA to IOOF.
18 Being "APRA regulated entities".
19 Exhibit 5.308 (APRA.0017.0001.0001), 14 August 2018, letter from IOOF to APRA.

amended to permit expressly the payment of compensation from the reserve *after* Questor had made the payment[20]. Mr Glenfield was asked questions by Counsel Assisting regarding the Questor reserves policy. The suggestion was that APRA may have relied on the later, amended form of the policy. APRA has investigated this issue internally, and confirms that the APRA supervisors considered the reserves policy dated 19 August 2013 and were of the view that it permitted use of the reserve to compensate members[21]. APRA did not base its decision on the later reserves policy dated 25 May 2017.

Outstanding matters

36. APRA notes that new information has emerged in the course of the Royal Commission hearings. Each of these matters raises concern for APRA, as set out in paragraphs 42 to 44 below, and APRA will investigate these matters further.

37. APRA agrees that on the face of the evidence from Mr Kelaher, he demonstrated a failure to understand the covenants under the SIS Act and obligations of a trustee under trust law. While a number of changes were agreed to at the IOOF board meeting of 1 August 2018[22], it seems that these matters were a 'matter of indifference' to Mr Kelaher, who did not accept that there were legitimate governance issues that needed to be addressed.[23]

38. It also appears on the evidence before the Commission that an important statement made in a letter to APRA dated 19 April 2017 was untrue.[24]

39. Counsel Assisting asked Mr Kelaher about a letter sent by Questor to members in April 2016[25]. Mr Kelaher accepted in evidence that statements made in that letter were "potentially capable of misleading," although he was "not sure what turns on it".

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20 Counsel Assisting's Closing Submissions, [720].
21 IFL.0027.0001.0746.
22 Counsel Assisting's Closing Submissions [187.4].
23 Counsel Assisting's Closing Submissions [188].
24 Counsel Assisting's Closing Submissions [222 – 223].
25 Counsel Assisting's Closing Submissions [216 – 217] Transcript, Christopher Kelaher, 10 August 2018, 4642; Exhibit 5.116.12 28 April 2016, Exhibit CK-2 Tab 12, CMA income dist – Open client letter (super) v1 1 April (for mailout), 1.

H. Colonial First State Investments Limited (CFSIL)

Breach of s 29WA of the SIS Act

40. Counsel Assisting has proposed findings of possible breaches of s 52(2)(b), s 52(2)(c), s 52(2)(d)(i) and s 52(2)(d)(iii) of the SIS Act in relation to CFSIL's admitted breaches of s 29WA of the SIS Act.[26]

41. The possibility that CFSIL was in breach of s 29WA (in particular, in respect of determining which member contributions were properly made to a choice investment option, and which needed to be transferred to a MySuper product) was first raised with CFSIL by APRA at a liaison meeting on 21 February 2014.[27]

42. For CFSIL, the contributions that breached s 29WA were due to previous successor fund transfers and transfers from another division of the fund.[28] APRA's position is, and has always been, that CFSIL breached s 29WA and that CFSIL needed to rectify the outcome of the breach. Because the relevant members were in a choice product, FirstChoice Personal Super (**FCPS**), it was not immediately apparent which members' funds should be moved to a MySuper product.

43. APRA also recognised that there may be some members who should ultimately be in MySuper, as their transfer to FCPS could have been without any investment direction (they could have been in the default option of the prior fund and moved into an equivalent option in FCPS). Therefore, it was important for CFSIL to have in place a process that enabled differentiation of the two types of members.[29]

Response to the breach

44. CFSIL's first response to the breach was in their 6 March 2014 letter.[30] The approach proposed by CFSIL did not indicate to APRA that CFSIL intended to take the matter seriously and take actions in the best interests of members to rectify the situation.

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26 Counsel Assisting's Closing Submissions, [388.2]; [388.3].

27 Exhibit 5.186 (CBA.0001.0451.0200) 19 March 2014, Letter from Colonial First State Investment to APRA; Exhibit 5.184 (CBA.0001.0451.0190), 19 March 2014, Breach Notice Colonial First State Investment to APRA.

28 Exhibit 5.184 (CBA.0001.0451.0190) 19 March 2014, Breach Notice Colonial First State Investment to APRA.

29 Transcript, Helen Rowell, 17 August 2018, 5193: 25-34.

30 Letter from CFSIL to APRA, 6 March 2014, APRA.0010.0002.2666.

45. APRA's response on 14 March 2014 indicated that APRA would consider enforcement action, if a satisfactory outcome were not achieved.[31] The indication that enforcement action may be taken by APRA produced a swift result from CFSIL, as its letter of 19 March 2014 demonstrates.[32]

46. From the 19 March 2014 CFSIL Letter onwards, APRA considered that CFSIL were being pro-active and taking the rectification process seriously and ensuring appropriate remediation for affected members.

Alleged misrepresentations

47. As part of its response to the s 29WA breaches, CFSIL proposed contacting affected members about obtaining an investment direction. APRA accepted that members who could positively assert that they wanted to direct their superannuation contributions into the investment option should be given the opportunity to do so.

48. Counsel Assisting has submitted that CFSIL's "communications to members and advisers in respect of ADA and the MySuper transition, which Ms Elkins agreed were misleading, also amount to a failure to exercise its powers in the best interests of members in breach of section 52(2)(c) of the SIS Act".[33]

49. The key misrepresentation alleged relates to whether the legislation required CFSIL to obtain an investment direction for contributions. The script said:

> *From 1 January 2014 legislation changed regarding investment directions for contributions. We must have on record a direction from each member as to how they would like their contributions invested.*
>
> *There has been a recent change to legislation which requires us to confirm the investment option(s) into which you would like your superannuation contributions paid.*

50. In oral evidence before the Commission, Mrs Rowell acknowledged that the above passage did not "*provide complete information to the member to enable them to make their choice or decision*", was not desirable and it would be preferable if there was complete disclosure to members.[34]

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31 Letter from APRA to CFSIL, 14 March 2014, APRA.0010.0002.2673.
32 Letter from CFSIL to APRA, 19 March 2015, APRA.0010.0002.2676.
33 Closing Submissions, [388.3].
34 Transcript, Helen Rowell, 17 August 2018, 5196:27-28, 34.

51. APRA submits that the script gives an incomplete picture of the courses of action (or inaction) open to the member. With hindsight, APRA accepts that it should have engaged further with CFSIL to achieve a script that was more complete.

52. The proposed letter that was provided to APRA is more explicit. It refers specifically to needing a direction relating to the FCPS account:[35]

> *There has been a recent change to superannuation legislation which requires us to hold an investment direction from you in relation to future contributions paid into FirstChoice Personal Super. If a direction is not held by us, we are unable to accept contributions into your account. For this reason, we would like to confirm the investment option(s) into which you would like your contributions to be paid*

53. APRA does not agree that the letter is misleading because:

(e) the law did require an investment direction for any future contributions paid into FCPS because FCPS did not have a MySuper product ; and

(f) without an investment direction, contributions could not be accepted into that product.

54. During the course of Mrs Rowell's oral evidence, it was suggested by Counsel Assisting that the letter failed to explain that if there was no investment direction provided that Colonial would be required to pay the member's contribution into a MySuper product.

55. APRA notes that the letter included the following section which explained that if there was no investment direction, Colonial would pay the contributions into a MySuper product.[36]

> ***What will happen if you do not reply***
>
> *It is important that we receive your direction as soon as possible. If we do not receive your direction by 10 May 2014, we will commence the process to transfer your account into a MySuper product. This may result in costs to you and the loss of any insurance cover you may currently have in FirstChoice Personal Super.*
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> *MySuper products are simple, low fee super products that meet certain minimum requirements that are set by the Government.*
>
> *If we do not receive your response by 10 May 2014, we will write to you with details of the transfer.*

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35 Exhibit 5.189 (CBA.0001.0451.0217), 4 April 2014, Email Sutherland to APRA and Attached Template Letter to Members.

36 Exhibit 5.189 (CBA.0001.0451.0217), 4 April 2014, Email Sutherland to APRA and Attached Template Letter to Members.

Remediation

56. APRA required CFSIL to remediate impacted members.[37] CFSIL engaged Ernst & Young to determine the methodology. A letter from Ernst & Young dated 13 October 2014 in respect of remediation of the s 29WA breaches is in evidence.[38] APRA considered the methodology appropriate as it put members into the position they would have otherwise been in had the breach not occurred.

57. Counsel assisting has submitted that an outcome of the s 29WA breach was:[39]

> *For some members, at least, this resulted in their account balance being adversely affected by commissions and other fees that would not otherwise have applied.*

58. APRA expected CFSIL to implement a remediation process whereby each member would end up with at least as much in their account as they would have had if the contribution had gone into Commonwealth Essential Super (**CES**) on the day that it was made, instead of into FCPS. As Mrs Rowell stated in her evidence, the remediation process agreed to by APRA required that "*any differential in fees was to be remediated within a short period of time*".[40] In APRA's view, this is what the remediation process delivered.

59. Under this process, compensation of members and transfer into CES for members without investment directions was undertaken in a series of the tranches. The first tranche included those members identified by CFSIL as being without an investment direction on 1 January 2014, where contributions were received over the period January to April 2014. Subsequent tranches captured member contributions made without an investment direction as they arose after that date.

60. The timing for the transfer of members in each tranche necessarily included the statutory 90 day period under which members were given 90 days in which to opt out of any transfer to a MySuper product following notification by the RSE licensee.[41]

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37 Exhibit 5.299 (CBA.0001.0451.0184), 14 March 2014, Letter from APRA to CFSIL.
38 Exhibit 5.300 (CBA.0001.0451.0310), 13 October 2014, Letter EY to CFSIL.
39 Counsel Assisting's Closing Submissions, [388.2].
40 Transcript, Helen Rowell, 17 August 2018, 5187:25-26.
41 *Superannuation Industry (Supervision) Regulations 1994* Regulation 9.46.

61. The table below sets out the date of transfer to CES for each tranche.[42]

Tranche	Member contribution Received in breach	Transferred members	Transfer date
1	1/1/14 - 14/4/14	3150	Sept – Nov 2014
2	15/4/14 – 24/6/14	848	Jan 2015
3	25/6/14 – 31/10/14	563	Apr 2015
4	1/11/14 – 30/4/15	363	Sept 2015
5	1/5/15 – 31/10/15	253	Mar 2016
6[43]	1/1/14-31/15/15	103	May 2016
7	1/11/15 – 31/8/16	287	Aug 16

62. In light of the above, APRA confirms the position stated by Mrs Rowell in her evidence that no formal enforcement action was taken because CFS had implemented the process it had agreed with APRA and because the members were dealt with appropriately.[44]

RA DICK SC

JA WATSON

EL BEECHEY

Counsel for APRA

31 August 2018

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42 APRA.0010.0002.2767; APRA.0010.0002.2953; APRA.0010.0002.2954; APRA.0010.0002.2965; APRA.0010.0002.2817

43 Tranche 6 related to members with contributions made to the cash investments option since 1 January 2014, who were identified in August 2015.

44 Transcript, Helen Rowell, 17 August 2018, 5189-5190. Referred to in Counsel Assisting's Closing Submissions, [707].