



10 March 2023

General Manager
Policy Development
Policy and Advice Division
Australian Prudential Regulation Authority

Dear Sir/Madam

Discussion Paper: Superannuation Transfer Planning: Proposed Enhancements

The Actuaries Institute ("the Institute") welcomes the opportunity to comment on the issues raised in the *Superannuation Transfer Planning: Proposed Enhancements – dated November 2022* ("Discussion Paper").

The Institute is the peak professional body for actuaries in Australia. Our members have had significant involvement in supporting RSE licensees and in the development and management of superannuation within Australia. Many of our members are advisors to RSE licensees in all stages of successor fund transfers, from initial market scan and tenders, through to the implementation and reconciliation steps of a successful transfer.

Whilst the Institute supports the intent of APRA's enhancements to planning, pre-positioning and executing transfers of members, as set out in the Discussion Paper, any new requirements or guidance should be appropriate for the circumstances of each fund, and take into consideration current practical impediments to fund transfers. Our specific comments to several of the questions raised in the Discussion Paper are set out in the Attachment to this submission.

The Institute looks forward to APRA's release of draft transfer planning guidance and would be pleased to discuss this submission.

Yours sincerely,

President

Attachment: Responses to selected APRA's consultation questions

1 **APRA proposes that all RSE licensees must regularly consider, and plan for, future circumstances that may necessitate a transfer of members into, and out of, the RSE licensee's business operations. Do you agree? If not, please provide views.**

Partially. The extent of consideration and planning must be proportionate to the circumstances.

SPS 515 para 12(d) currently requires a consideration of triggers for situations where expected member outcomes are not being achieved. We support APRA's suggestion to elevate this trigger framework to improve the level of preparedness and to be based on members' best financial interests – in particular, we agree with APRA's proposed guidance that the level of preparedness should be commensurate with the need for readiness. As per APRA's insights, there is a large variance across the industry with different fund sizes, rates of growth and performance. For any planning to be useful, it must be **appropriate for the fund's context**, therefore a principles-based approach should be taken, e.g.:

- The considerations for a larger, well-performing fund are very different from a smaller, lesser-performing fund. Transfer planning is complex and if introduced without an appropriate "trigger" framework would require RSE licensees of better performing funds to incur disproportionately high costs and utilise resources, thereby reducing member outcomes given the small likelihood of a transfer of members occurring.
- Most large funds have already completed or would have considered a merger with a smaller fund, particularly in the last few years. This has been done without the need for additional planning requirements as proposed in this discussion paper.
- Planning should initially focus on particular triggers for when a transfer would need to occur; e.g. the RSE licensee believes a product is not promoting members' best financial interests, or fails the annual performance assessment test for the first time.
- More detailed planning should only be required if the triggers are breached; e.g., how a suitable merger partner would be selected to improve outcomes for their members and what key considerations should apply in selecting a merger partner.
- Detailed work relating to specific merger partners is less likely to be an optimal use of resources, due to inherent uncertainty which funds will be available at the time and what terms they will be offer in relation to transition costs, insurance and ongoing management of members' accounts.

2 What are the minimum preparatory steps that an RSE licensee should take to be prepared for a transfer of members?

As noted in our response to question 1, the level of preparedness depends on the circumstances of the fund and whether the RSE licensee is planning for a transfer in or out.

Attachment B suggests that in respect of a transfer out, regular market scanning, reviews of transfer options and exploratory discussions should be undertaken to identify a credible transfer option. We believe this approach is problematic, given the time and effort required to undertake such a process in a dynamic market. Any conclusions reached from market scanning may quickly become out of date as other funds update their propositions or allocate resources to other initiatives, consequently detailed market scanning would result in duplication of effort and expenses.

Instead, our view is that RSE licensees should ensure they are ready to engage in a transfer process should a trigger event occur. That means that efforts should be focussed on working through the steps in pre-positioning for a transfer, including identifying issues relating to the fund itself which could stall or prevent a transfer process. The potential guidance given in the table in Attachment B lists one bullet point with issues to be considered, i.e. "legislative, operational, cultural and practical barriers". In practice, there is a very long list of legislative and operational issues to work through in any transfer, including:

- **Key information:** All the key information required to approach the market should be readily available, for example, an outline of the membership, summary of product designs, key service providers and contractual terms including termination provisions and novation provisions.
- **Documentation:** Ensuring that all of the fund's documentation (such as trust deed, operational policies and procedures) is reviewed for suitability in a transfer process. In particular, this may necessitate amendments to the trust deed to accommodate a transfer.
- **Insurance:** All insurance arrangements should also be reviewed for suitability in a transfer process. Consideration should be given to what issues may arise with complex legacy arrangements and whether these can be rationalised or harmonised before a transfer.
- **Assets:** Assessing any potential issues with transfers of asset holdings, for example liquidity/redemption restrictions and tax consequences. This is further complicated in a partial fund transfer situation where different tax rules may apply. Preparation could also commence for required novation of investment management contracts, where applicable.
- **Remediation:** Completing any existing remediation activities in a timely manner.
- **Legislative requirements:** A thorough review of the various legislative requirements (in addition to equivalent rights and members' best financial interest test) to assess areas which need to be addressed as part of a transfer. This covers a wide range of areas, such as: provisions which require APRA relief, number of MySuper products, implications for members transferring with pensions, directions given to the trustee, family law, tax, state laws, AML/CTF.

- **Operational:** There is a long list of operational aspects that are critical to planning an SFT. These include administration systems, resources to manage the SFT and capital planning.

3 How would an RSE licensee look to balance being adequately prepared for a future transfer of members without incurring undue cost?

As noted in our previous responses to Questions 1 and 2, the level of preparedness should be based on what is appropriate for the circumstances of each fund, rather than a common position for every single fund. Consequently, the amount of preparedness and therefore costs incurred would be commensurate with the current fund context and should constitute a “no-regret” spend. Please refer to our response to Question 2 for examples of work that would assist with any transfer while still being valuable even if a transfer does not proceed.

5 What guidelines would support an RSE licensee to ensure that appropriate due diligence is undertaken without resulting in undue cost and delays?

As noted in our response to Question 1, an appropriate trigger framework should not result in unnecessary cost. In any case, due diligence discussions between funds would generally only occur after the initial discussions and suitability had been determined.

With regards to undue delays, mergers are complex legal and operational projects under the current legislative and regulatory environment and there is a limit to the level of APRA guidance that can be provided to alleviate this.

Any due diligence undertaken should be appropriately phased, starting with the areas that are most likely to cause potential barriers so that highest risk areas can be assessed first and the merger strategy can be reassessed if needed.

We understand that industry feedback on barriers, the level of complexity of mergers and where improvements could be made has already been provided to the Minister for Financial Services.

7 Do you have any comments on the proposed requirements relating to the transfer of MySuper assets (refer to Attachment A)?

We have concerns on how these requirements would support other RSE licensee obligations involved with a transfer. For many funds, the MySuper assets constitute a large proportion of the funds under management and/or use building blocks which are also used in some of the Choice options. In those circumstances, it would not be feasible or indeed appropriate to transfer only the MySuper assets, as the remaining assets could be stranded and incur relatively large costs if transferred separately at a later date. In such circumstances, any transfer would only be appropriate if considered for the fund as a whole.

Consequently, there should not be specific requirements on the transfer of MySuper assets in isolation as this may have detrimental consequences for the remaining members of the fund. We have concerns that an RSE licensee may not be able to approve such a proposal when considering the best financial interests of all members.

However, even in cases of a holistic fund transfer, the MySuper and Successor Fund Transfer test could potentially be streamlined, although this may require legislative change to the Best Financial Interests Duty and/or the definition of a successor fund in the SIS regulations.

For specific cases where it is feasible to transfer the MySuper assets in isolation (for those funds which have very small MySuper components) there should not be a need to define separate requirements on the transfer of MySuper assets in isolation, as these transfers would be covered by existing overarching requirements relating to member outcomes and consideration of specific cohorts. Further, we are concerned that capital gains tax relief is only available if all of the fund assets transfer, and recommend that Government be approached to amend this anomaly that has significant impact on transferring members.

8 What are the most significant barriers to a transfer of members, and how can the impact of these be reduced so that transfers are timely, orderly and less costly?

As noted in our response in Question 5, we understand that detailed feedback from industry bodies has been provided to the Minister for Financial Services on the level of complexity of mergers and where improvements could be made, particularly in relation to streamlining the various areas of legislation which impact transferring or receiving funds.

Also as noted in our response to Question 2, thorough preparation is required for any merger process. If the RSE Licensee has a high degree of preparedness for a transfer, this should assist in making the process more timely and orderly. Significant complexity also exists in the execution phase, for example:

- **Asset Transition:** It is not possible to simply transfer a large amount of superannuation assets without detailed planning. The costs involved are very large, and if not managed carefully could either incur losses for the transferring members (i.e. higher sale/termination costs) or on the receiving fund (i.e. incorrect transfer of unlisted assets, etc). Some practicalities will depend on the views of other parties, for example on what assets a receiving fund is willing to receive in specie, which cannot necessarily be predicted in advance. There are other issues of complexity such as around the novation of contracts where pre-planning could provide streamlining opportunities.
- **Administration and Product Readiness:** From either a member or employer sponsor experience point of view, it may be necessary to make administration or product changes at the receiving fund before the members can be received. For example, the incoming members may require different insurance policy conditions such as terms to facilitate cover to members in dangerous occupations. This requires complex administration changes which must be done to ensure there are no future member incidents that require remediation. As an example of a specific product consideration, the receiving fund may need to seek clarity from APRA to confirm how the transferring product may impact the annual performance assessment test measurements including clarity on how APRA would exercise any discretions that are within its remit. The speed with which APRA can provide clarity would influence the speed of some mergers, both directly and through indirect impacts on whether/when there is merit in working through other aspects of a merger.

- **Member Communications and Servicing:** Comprehensive member communication is required to meet the minimum legal requirements, and it is important to continue engagement with the transferring funds members and other stakeholders, such as employers. Otherwise, there would be a risk to the receiving fund, which is incurring costs to execute the transfer, that the members and stakeholders would have a poor experience and may have lower retention post-transfer. In the specific case of transfers involving funds which have failed the performance test (which has been a key driver for recent transfers) funds may also need to seek clarity from APRA on the best approach for the timing of member communications required under the legislation taking into account the potential for communications about a product under-performing becoming irrelevant due to transfer to another fund.
- **Capability, Experience and Capacity:** There is likely to be a wide variance in the experience of funds in managing transfers. Consequently, even though the receiving fund may have existing processes and access to resources, the incoming fund may not. This is further exacerbated by industry capacity constraints, whereby experienced resources may not be available. Anecdotally, recent merger activity and consolidation has also resulted in experienced people leaving the industry after the fund transfers, and time is required to upskill new entrants to the industry.

11 Has APRA sufficiently identified the critical components of the execution phase? If not, what is missing or inaccurate?

We note that all mergers involve complex legal and operational matters. Detailed planning is key as noted in our response to Question 2.

In most cases, the RSE licensee may not be at liberty to act 'pragmatically' due to their legal obligations which would take priority over APRA guidance in the event of conflicting requirements. As mentioned in responses to previous questions, industry bodies have already raised areas where legal obligations could be streamlined or improved to remove potential impediments in mergers. Technical details are outside the scope of this submission. However, we would note the opportunity for APRA to liaise with other parts of Government to help to inform work on relevant updates to legislation that currently has unintended impacts on fund mergers and other Successor Fund Transfers.