11 November 2022

[redacted]
General Manager
Policy Development
Policy and Advice Division
Australian Prudential Regulation Authority

BY EMAIL: superannuation.policy@apra.gov.au

Dear [redacted],

Proposed enhancements to strategic planning and member outcomes framework

The Financial Services Council (FSC)[1] welcomes the opportunity to engage with APRA on its review of Prudential Standard SPS 515 Strategic Planning and Member Outcomes (SPS 515) to improve the way in which superannuation trustees (or RSE Licensees) promote better outcomes for their members.

Overall, we consider that the member outcomes prudential framework has been overall positive for improving member outcomes and recognise the important role APRA has played in this result.

We note APRA's proposal to incorporate new fee setting principles into the SPS 515 framework is in response to recent changes to trust deeds made by industry superannuation funds. Specifically, a number of industry superannuation funds have recently altered their trust deeds with the support of APRA in response the section 56 change to the SIS Act which aimed to prevent members from bearing the cost of penalties imposed on trustees and directors for breaching the law.

The impact of these changes to trust deeds has been to allow industry superannuation funds to charge fees to set up contingency reserves for future use to pay penalties imposed by courts on trustee and directors for breaching the law. Given the unusual

[1] 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, life insurers and financial advice licensees. Our Supporting Members represent the professional services firms such as ICT, consulting, accounting, legal, recruitment, actuarial and research houses.

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.

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nature of these fees we understand why APRA would want to ensure there are clear rules for trustees of industry superannuation funds to ensure the appropriate use of contingency reserves derived from members money.

However, this proposal has created some uncertainty that the fee setting principles could be interpreted to apply more widely to inadvertently capture fees paid to the trustee from the fund as trustee remuneration is an area where the longstanding position at law is that it is not within the scope of the SIS Act. We seek clarity that APRA does not intend to apply these principles outside of their powers under the SIS Act in this broader context. Further, in implementing any fee setting principles, care should be taken to explicitly make clear their intended purpose and policy justification.

For the avoidance of doubt and as the simplest solution, we would suggest that APRA make clear through an express statement in the enhanced SPS 515 that the proposed fee setting principles do not apply trustee remuneration.

Should APRA desire to consider this point further, we refer APRA to our previous FSC submission to APRA in response to APRA's Discussion Paper: Strengthening Financial Resilience in Superannuation which support this view. In this submission, the FSC also attached legal advice which supports the view that the level of fees actually charged by the trustee not within the scope of the SIS Act, so long as it is within the limits expressed in the fund's deed and consistent with what is said in the fund's public disclosures.

We also provide further comments attached. These comments relate to other areas where further clarity would assist superannuation trustees efficiently and effectively implement APRA's proposals.

The FSC and its members look forward to engaging further with APRA on the design and implementation of enhancements of the member outcomes framework.

Should you wish to discuss this submission further please do not hesitate to contact me.

Yours sincerely,

[redacted]

[redacted]
Policy Manager, Superannuation
Financial Services Council

ATTACHMENT: DETAILED FSC COMMENTS ON PROPOSED ENHANCEMENTS TO SPS 515

ANNUAL OUTCOMES ASSESSMENT METHODOLOGY

Cohort analysis

APRA's proposals would require trustees to go beyond simple cohorts that only reflect age, product and investment option to demonstrate a deeper understanding of their membership base when analysing cohort-based views for member outcomes.

To assist trustees in identifying and assessing cohorts, APRA should outline its expectations of relevant considerations that a trustee should consider where more detailed member data is not readily accessible by the trustee or where it is otherwise limited or incomplete.

- There is a risk that setting strong general regulatory expectations for trustees to develop more granular cohorts could drive unscalable practices with limited member benefit. Trustees are responsible for determining the best combination of factors that would appropriately segment their membership base, however the data differentiating for these factors must be sufficiently accurate and complete.
- Collecting additional information on members to inform development of cohorts raises a concern about the possibility that this could 'trigger' personal advice requirements on the basis that the member may believe the request has been made to provide them with a personal recommendation or a cohort-based product solution or strategy.

There is a potential for membership cohorts to be considered using a wide range of different factors that give a more holistic view of members' financial situation. This could include, for example, eligibility for the Age Pension, salary and home ownership status. However, up-to-date data for each member on these factors is not readily available to superannuation trustees.

Towards the objective of obtaining more granular data for trustees to better understand the financial situation of their members as required by law and in line with APRA's expectations, we **recommend** APRA consider liaising with the ATO and DSS on the possibility of providing a way for superannuation funds to access data on their members via SuperStream, subject to appropriate consumer safeguards such as ensuring that data is provided in aggregate form.

BUSINESS PERFORMANCE REVIEW

Assessing performance of choice products

APRA expects that in determining whether the financial interests of members are being promoted by the trustee, superannuation trustees would consider appropriate benchmarking and comparison, including the use of appropriate peer groups.[2]

[2] SPG 516 paragraph 79.

Benchmarking and comparison of peer groups is more challenging for superannuation trustees with choice products in their fund, due to the complexities of creating a like-for-like comparison between the broad variety of products within the choice market.

This is partly because existing data from research houses do not cover the entire scope of Choice products. We are optimistic that the new APRA superannuation data publications, which will contain fund and product level data for all accumulation superannuation products, will help in this regard.

This is also partly because there is limited existing guidance from APRA around choice products and in particular, products offered on a platform or a wrap, as well as and legacy (for example, whole of life endowment) products. For those superannuation funds offering Choice products, we **recommend** APRA complement the new APRA superannuation data publications with guidance for trustees to consider when assessing member outcomes in Choice products against industry peers.

Encouraging continuous improvement

We note APRA's proposal to clarify that the business performance review must articulate where the trustee needs to take action or where operational changes are necessary to improve member outcomes.

The FSC supports improvements to the framework to allow business performance reviews to be more open, honest and forward looking. We observe however this approach creates tensions with trustee's covenant obligations that they must already be promoting members' best financial interests (else they are breaking the law). We would therefore **recommend** that APRA provide more clarity on its expectations in this area.

CLARIFICATION OF APPLICABLE TIMEFRAMES

As set out in the discussion paper, APRA intends to consult on the specific drafting enhancements to SPS 515 and to communicate the proposed commencement date for the enhanced regime in the first quarter of 2023.

As noted in the discussion paper, SPS 515 is a relatively new standard and RSE licensees have only completed two business planning cycles since this standard was introduced. While we recognise and appreciate that there remain areas where further improvement is needed, we **recommend** APRA consider the legislative and regulatory pipeline and ensure that there is an appropriate transition period for implementation of the enhanced requirements.

We note APRA proposes to require superannuation trustees to leverage the additional and more granular data published by APRA from the Superannuation Data

Transformation Project and the APRA heatmaps when assessing member outcomes.

We understand the expected timing for the next round of publications to be:

- MySuper and Choice heatmaps - December 2022
- Quarterly product level publication and key metrics dataset (new publication)
    - Q4 2022 for MySuper and Multi-sector choice accumulation products
    - Q1 2023 for other multi-sector segments and single sector options.

We observe that there may be challenges for trustees in aligning the timing of Member Outcomes Assessments, Fund reporting, Business Performance Review (BPR) and Business Plans to the availability of this data.

To avoid undue pressure on getting annual outcomes assessments and business performance reviews finalised, we **recommend** APRA provide clarity and a commitment around the ongoing reporting cycle for these publications at the time of determining the commencement date for the enhanced SPS 515 framework to ensure there is enough flexibility for trustees when transitioning to the improved regime.