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Feedback on proposed class exemption: Approval to own or control an RSE licensee

The FSC welcomes the opportunity to provide specific feedback on APRA's draft instrument to exempt a specified class of persons from compliance with the change of ownership and control provisions of the *Superannuation Industry (Supervision) Act 1993* (SIS Act). We support APRA's objective of ensuring the regime operates as intended - focusing regulatory scrutiny on genuine control risks while reducing unnecessary administrative burden for individuals captured only through technical associate or tracing rules.

In practice, large and complex corporate groups frequently give rise to incidental deemed-control outcomes that were never intended to trigger change of ownership and control requirements. The draft instrument is a meaningful step toward addressing this issue, and we appreciate APRA's efforts to streamline compliance for low-risk cohorts such as management employees with immaterial interests.

At the same time, our members have identified several areas where further clarification or refinement would enhance the practical operation of the exemption, avoid the creation of new two-tiered outcomes, and strengthen alignment with the underlying policy intent of the regime. This submission outlines nine targeted recommendations to support consistent application of the exemption, address drafting ambiguities, and ensure the relief functions effectively within modern corporate structures, while preserving APRA's full supervisory discretion and residual direction powers.

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, financial advice licensees and investment platforms.

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

We appreciate APRA's efforts to progress regulatory simplification in this area and encourage continued engagement with industry to ensure the change of ownership and control provisions are operating as intended. If you would like to discuss this matter further, please contact [redacted]

Yours sincerely,

[redacted]

Overview of feedback on the proposed class exemption

The FSC supports APRA's proposed class exemption, which appropriately targets circumstances where individuals are deemed to control an RSE licensee solely through the associate rules rather than through any genuine control or influence. The exemption represents a welcome step in reducing unnecessary compliance burden for low-risk cohorts within complex corporate structures.

However, as currently drafted, the relief is too narrow and will leave material practical gaps for large listed corporate groups, limiting the exemption's usefulness and leaving many individuals unintentionally outside its scope.

We have put forward several recommendations to ensure firms can meaningfully rely on the exemption and for it to fully achieve its policy intent, while still preserving APRA's prudential oversight, supervisory discretion, and ability to intervene where genuine control risks arise.

The submission also includes a small number of structural observations regarding the broader change of ownership and control regime, where existing definitions and deeming mechanisms continue to generate compliance friction beyond the scope of the exemption itself. These broader observations are provided to give context to the issues encountered in practice and are not intended to delay or condition finalisation of the class exemption.

Section A: Recommendations specific to the proposed class exemption

Recommendation #1: Extend the class exemption to include directors

The exemption is currently limited to company secretaries and management officers (SM Officers) of the relevant companies (paragraph 5(a) of the *Superannuation Industry (Supervision) Act Exemption No. XX of 2026*). However, directors frequently hold only de minimis shareholdings yet are nonetheless captured by the associate deeming provisions, which technically treat them as controllers despite having no genuine capacity to influence the RSE licensee through their shareholding. Excluding directors from the exemption leaves a significant cohort still subject to inadvertent technical breaches and undermines the core policy intent of the class exemption; to reduce unnecessary compliance burden where control arises solely through deemed association with an already-approved entity under s29HD of the SIS Act.

The FSC recommends expanding the class exemption to also include directors (including executive and non-executive directors) who hold a de minimis direct control interest and whose deemed control arises by virtue of being an associate of a 29HD-approved entity. This would remove the largest remaining practical gap, align the exemption with its policy objective, and provide meaningful relief for large listed corporate groups where director shareholdings are routinely modest and non-influential.

Recommendation #2: Clarify the causation threshold for SM officer exemption eligibility

The current drafting of the instrument limits the exemption from the change of control and ownership provisions to situations where an individual "only" holds a controlling stake in the RSE Licensee "as a result of" being a company secretary or management officer of a 29HD-approved company (paragraph 5(a) of the *Superannuation Industry (Supervision) Act Exemption No. XX of 2026*).

This threshold is unrealistically strict. In large corporate groups, individuals typically fall within the associate deeming rules through multiple associate chains - such as officer roles across related entities, relative associations, interposed subsidiaries (each deemed to hold a 100% interest), and "associate-of-associate" linkages. As a result, it is very unlikely that an individual's deemed stake will arise solely from their status as an SM Officer, even where they have no genuine ability to influence control.

The phrase “as a result of” also introduces ambiguity. It is unclear whether APRA intends the exemption to apply only where a deemed stake arises from an employee share plan, whether it includes voluntary off-market or on-market share purchases below the threshold, or whether it extends to any situation where control is deemed purely because the individual is an SM Officer of a 29HD-approved entity. Given that a person’s “stake” is calculated by aggregating all legal and beneficial interests across the corporate group, the combined effect of the “only” and “as a result of” tests mean many low-risk individuals may fall outside the exemption due solely to incidental or technical associations. As drafted, the relief may be unreliable and of limited utility for the very scenarios it is intended to address.

The FSC recommends that APRA clarify and, where necessary, relax both the “only” and “as a result of” causation limbs to ensure the exemption operates as intended. This could include:

- allowing relief where deemed control arises solely or principally from the individual’s association as an SM Officer of a 29HD-approved company; and
- expressly confirming that incidental, technical or immaterial associate pathways - and the mechanism by which shares were acquired (including employee share schemes or voluntary purchases) - do not disqualify an individual from the exemption where their substantive basis for deemed control is their SM Officer role.

These refinements would ensure the exemption operates effectively within complex group structures and remains aligned with the policy intent of excluding low-risk employees from unnecessary approval requirements.

Recommendation #3A: Consider recalibrating the direct control interest (DCI) threshold

APRA are yet to provide a rationale behind the proposed <2% direct control interest (DCI) threshold, and it may be set too low to operate effectively. In practice, long-tenured executives and participants in equity incentive plans can exceed 2% through ordinary course remuneration, well before any requirement to seek APRA approval to acquire a controlling stake is triggered. Setting the threshold at 2% risks excluding low-risk individuals the exemption is intended to cover and may require ongoing recalibration as equity accumulates.

This <2% threshold also does not address situations where executives are deemed to hold technical DCIs under the associate and tracing provisions (Sch 1, clause 1-11, *Financial Sector (Shareholdings) Act 1998* (FSS Act). In complex corporate structures, these rules can attribute 100% direct control interests to individuals through interposed subsidiaries or associate-of-associate linkages. A strict 2% threshold therefore provides limited practical protection in circumstances where deemed DCIs bear no relationship to actual influence or ownership over the RSE Licensee.

The FSC recommends that APRA recalibrate the DCI threshold to a more realistic level - for example, 5%, consistent with analogous disclosure and control regimes. A higher threshold would ensure the exemption captures the intended low-risk cohort and reflects the policy intent of focusing regulatory attention on meaningful control.

Recommendation #3B: Clarify the meaning of “direct control” for threshold purposes

The operation of the DCI threshold is further complicated by uncertainty surrounding what constitutes “direct control” for the purposes of applying the class exemption. It is unclear whether a DCI should be determined by reference to legal ownership, beneficial ownership, or both, including where interests are split or held through custodians or wrap platforms. This uncertainty is compounded in cases involving unvested, non-voting, or restricted equity instruments (such as restricted stock units), which confer no present ability to exercise control yet may technically be counted toward an individual’s interest depending on interpretation.

The FSC recommends that APRA clarify how different forms of legal, beneficial, contingent, and custodial holdings should be treated when assessing eligibility against the DCI threshold within the exemption. Explicitly excluding unvested or non-voting equity, and interests that do not confer effective control, would ensure the threshold operates in a manner that is workable, proportionate, and reflective of genuine control risk.

In clarifying the operation of the direct control interest threshold, the FSC also recommends that APRA confirm its supervisory approach in relation to any inadvertent non-compliance that may have arisen prior to the commencement of the class exemption due to interpretive uncertainty. This would provide certainty during transition and ensure consistent treatment as the clarified framework is implemented.

Recommendation #4: Extend the exemption to notification obligations

The draft instrument provides relief from the requirement to apply to APRA for approval to acquire a controlling stake for individuals who would otherwise be deemed to acquire such a stake solely through the associate provisions. However, it does not extend to the separate obligation to notify APRA when a controlling stake in an RSE Licensee changes (set out in s29E of the SIS Act). These notification requirements operate independently of the application process, meaning that individuals could still face technical breaches or unnecessary compliance steps even if they are exempt from making an acquisition approval application to APRA.

If the policy objective is to eliminate inadvertent procedural breaches where no genuine control risk exists, then the FSC recommends that that APRA mirror the relief across both parts of the regime. Otherwise, regulated entities will remain subject to residual reporting obligations that the exemption was intended to streamline.

Recommendation #5: Clarifying the treatment of existing individual approvals

Several individuals have previously obtained APRA approval under s29HD of the SIS Act in circumstances that the new class exemption is now designed to streamline. These approvals were granted at a time when no class relief was available, requiring individuals to undertake a full application process. With the introduction of the class exemption, the ongoing status and relevance of these historical approvals is now uncertain.

This creates the potential for inconsistent treatment between individuals who applied early, and those who will now fall within the exemption. Without clarification, legacy approval holders may face unnecessary compliance obligations or ambiguity about whether they must continue to rely on their individual approval, whether the exemption supersedes that approval, or whether any further action is required to transition to the exemption.

The FSC recommends that APRA clarify the treatment of existing individual approvals in light of the new class exemption, including confirming whether these approvals remain valid, whether they are taken to meet the exemption conditions, and whether individuals may now rely on the class exemption without further action.

Recommendation #6: Confirmation of APRA's supervisory powers in the context of the exemption

APRA's residual direction powers, such as the ability to require a person to relinquish interests or take corrective action, remain a critical prudential safeguard where trustee covenants, fitness and propriety, or the sound operation of an RSE licensee may be at risk. While the class exemption is intended to streamline low-risk, technical approval scenarios, its introduction may create uncertainty for industry as to whether these broader supervisory powers continue to operate unaffected.

Without explicit clarification, there is a risk that stakeholders may misinterpret the exemption as limiting APRA's ability to intervene in situations where control is exercised improperly or poses prudential concerns. This ambiguity could inadvertently weaken the perceived robustness of the framework or cause hesitation among entities seeking to rely on the exemption for fear of overlooking residual regulatory obligations.

The FSC recommends that APRA expressly confirm that the class exemption does not constrain APRA's residual direction powers.

Section B: Broader recommendations on change of ownership and control framework

Recommendation #7: Broaden the approved company linkage

The exemption currently only applies if the individual is an SM Officer of the specific company that APRA has approved under s29HD of the SIS Act to hold a controlling stake in the RSE licensee.

However, in complex group structures that's not how things work in practice. Often:

- APRA approves a holding company or parent entity under s29HD of the SIS Act
- The person works for a different company in the group (e.g., a subsidiary, service company or shared-services entity)
- Yet, under the associate rules, the person is still deemed to hold the same controlling stake because they are an officer of a group entity associated with the approved company

On a strict reading, these individuals don't qualify for the exemption, even though they were only deemed to control the RSE licensee because of their association with the approved company somewhere else in the ownership chain.

Further, the exemption is only available if the "relevant company" has APRA's approval. But SM Officers have no control over whether or when their employer company obtains this approval. This means eligibility for the exemption depends on corporate-level approvals outside of their control.

For the purposes of the class exemption, the FSC recommends that APRA clarify and broaden the linkage so that "approved company" can be any entity within the same corporate group, including sister companies, where the individual's deemed control arises solely because another entity in that group has obtained approval under s29HD.

Recommendation #8: Adopt a functional definition of management employee

The current definition of "management employee" is tied to the employing entity under the FSS Act. In modern corporate groups, senior managers are frequently employed by shared services entities or group service companies, even though they exercise substantive management authority over the operating or holding company that has 29HD approval. As drafted, this payroll-based definition will exclude many senior managers who, in substance, are part of the cohort the exemption is intended to cover.

This technicality undermines the policy purpose of the class exemption by denying relief to individuals who present no genuine control risk, but who are still captured by the associate deeming provisions due to their management role within the approved company's corporate group.

For the purposes of the class exemption, the FSC recommends that APRA adopt a functional management test. Define “management employee” by reference to the individual’s substantive management responsibilities for the approved company, regardless of which entity is their formal employer, or alternatively align the concept with the *Corporations Act 2001* definition of an “officer” to ensure the exemption covers the intended group of senior managers.

Recommendation #9: Update transitional deeming to cover post-2019 appointees

The existing transitional deeming provisions found in *Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 1) Act 2019* only provide relief from applying for APRA approval for arrangements and appointments that existed prior to 5 July 2019, which limits their ongoing relevance. As time passes, more directors, senior managers, and group entities have been appointed or introduced after this date and consequently fall outside the transitional protection. Without broader coverage, these post-2019 appointees will continue to encounter avoidable compliance friction and technical deemed-control outcomes that the regime was not designed to regulate.

In practice, this creates a two-tiered system: legacy officers benefit from transitional relief, while otherwise comparable individuals appointed in later years face unnecessary application and notification burdens despite presenting no greater control risk.

The FSC recommends that APRA modernise and broaden transitional deeming arrangements to extend appropriate relief to post-2019 appointees and entities introduced after that date. This would ensure consistent treatment and reduce avoidable compliance friction.

While this issue extends beyond the immediate scope of the class exemption, addressing it would promote consistency in the ongoing operation of the ownership and control framework.