



AUSTRALIAN INSTITUTE of
SUPERANNUATION TRUSTEES

10 October 2019

Ms Heidi Richards
Executive General Manager, Policy and Advice
Australian Prudential Regulation Authority
GPO Box 9836
SYDNEY NSW 2001

Email: superannuation.policy@apra.gov.au

Dear Ms Richards,

Proposed revisions to SPG 516 Business Performance Review (formerly SPG 516 Outcomes Assessment)

In brief:

AIST welcomes the emphasis in Draft SPG 516 on the promotion of members' financial interests. Pursuing long-term net returns for members must be the primary consideration in achieving optimal retirement outcomes, supported by risk management, governance, scale, sustainability and member services.

AIST challenges proposed deferments for Choice products and calls for additional scrutiny to ensure parent companies and related parties payments are in members' best interests.

The Australian Institute of Superannuation Trustees (**AIST**) welcomes the opportunity to respond to the revised Draft Prudential Practice Guide SPG 516 – Business Performance Review (**SPG 516**).

AIST strongly supports an increased regulatory focus on member outcomes and the promotion of the financial interests of members. Our concerns and comments regarding Draft SPG 516 are summarised as:

- Primacy must be given to long-term net returns provided to members, supported by risk management, governance, scale, sustainability and member services;
- Requirements for Choice products should not be deferred;
- A data reporting framework is needed for meaningful benchmarking;
- Returns paid to parent companies and related parties should be further scrutinised;
- In order to allow meaningful comparison, there is a need for industry consistency in the publishing of annual outcomes assessment; and
- Scale considerations at an asset class level.

Primacy must be given to long-term net returns to members

We believe that it is long-term net returns that are of critical importance to the retirement outcomes of all members. This is what the member receives – it is the most important contributor to optimising income in retirement and is therefore the foundation stone for comparison.

We recognise and support the consistent reference to the promotion of the financial interests of members throughout Draft SPG 516 as this aligns with the intent of *Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No.1) Act 2019*.

We do however note that Draft SPG 516 paragraph 63 states that:

'The outcomes assessment requires an RSE licensee to reach a conclusion about the promotion of financial interests of the members that hold the product. As a consequence, an RSE licensee should ensure sufficient weight is given to the net returns delivered to members.'

Whilst we acknowledge the attempt to highlight the importance of net returns delivered to members, we submit that net returns to members are a primary obligation. That is, it should not be weighted alongside other measures, it should be a stand-alone measure in its own right. If a trustee is required to divide 100 points between different factors, then this risks diminishing the pivotal objective of pursuing net returns.

The other relevant factors, such as fees and costs should not be considered in isolation but linked back to the promotion of a member's financial interests, particularly how they impact a member's net returns. The relative impact of these factors may depend on a member's age and other criteria.

Deferring requirements for Choice products

According to the Productivity Commission Inquiry Report, the Choice segment accounts for 41% (\$1.0 trillion) of total assets and 39% (11.1 million) of member accounts with findings indicating that there is evidence of material underperformance within this segment¹. Given the size of this segment and evidence of underperformance, it is unfortunate that APRA has indicated in Draft SPG 516 the aspects of the outcomes assessment will not need to be completed for Choice products until the SIS Regulations are finalised.

¹ Productivity Commission Inquiry Report, Superannuation: Assessing Efficiency and Competitiveness (2018), 203-4. Available from: <https://www.pc.gov.au/inquiries/completed/superannuation/assessment/report/superannuation-assessment.pdf>

This continues a practice of regulatory carve outs being given to the Choice segment that has resulted in serious omissions and exemptions in superannuation reforms. These have had a negative impact on the interests of super fund members. As highlighted in the report by Professor Clarke, these exemptions reduce protection for superannuation fund members, reduce competition and compromise the capacity of regulators to supervise the system².

Draft SPG 516 paragraphs 75-77 allows for an RSE licensee not to undertake the legislated comparison requirements under sections 52(9)(a)(ii) and 52(10A) of the SIS Act for Choice products because SIS Regulations are yet to be released.

Firstly, we wish to highlight that section 52(9)(a)(ii) requires a comparison of a Choice product with the comparable choice products in relation to the Choice product **and** a comparison of the Choice product with any other benchmarks specified in regulations. Ultimately the fact that SIS Regulations are yet to be released is not a sufficient reason for not completing comparison to appropriate Choice products.

Secondly, in relation to comparison with other benchmarks we wish to highlight that although product heterogeneity within the Choice segment makes benchmarking challenging, the Productivity Commission was able to accommodate these differences by benchmarking individual Choice investment options to their own individual asset allocations.

Furthermore, the Productivity Commission proposed that all MySuper and Choice investment options be compared with a listed benchmark tailored to their asset allocations. This approach to align benchmark standards for MySuper and Choice is in line with the intent of the legislation whereby the Explanatory Memorandum states:

Schedule 1 recognises that although the features of MySuper products and choice products differ, the obligation to undertake an annual outcomes assessments in respect of beneficiaries holding either MySuper products or choice products should be done in as similar

Choice carveouts

- Requirements for Choice super product disclosure dashboards were meant to apply from 1 July 2015, however ASIC delayed the start date until 2016, then 2017, then 2019 and now until 1 July 2023.
- APRA does not currently collect or publish statistics on choice products/investment options equivalent to the comprehensive statistical collection derived from the MySuper reporting standards.
- New fees and costs disclosure under Regulatory Guide 97 fee and cost disclosure requirements do not apply to superannuation held via a platform.
- Later this year APRA intends to publish performance-related data and benchmarks for each MySuper product only, using a heat map approach.

² Professor Thomas Clarke, Serious failures in superannuation governance and critical omissions in superannuation regulation (2018). Available from: https://www.aist.asn.au/getattachment/Media-and-News/News/2018/Regulatory-carve-out-report/regulatory_carve_out_report_-_prof_clarke_-_serious_omissions.pdf.aspx

a way as is possible, recognising that trustee obligations to members should apply irrespective of product type

We submit that any objective industry benchmark should be inclusive of both MySuper and Choice funds, as evidence has shown that MySuper products have consistently outperformed Choice products³ and this consequently creates a better performance benchmark for the Choice segment. If a product issuer seeks another benchmark, the onus should be on them to provide evidence demonstrating the appropriateness of another comparator.

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Super is about retirement outcomes, whether MySuper or Choice is the vehicle to do this, all members want the optimal retirement income and should be able to easily compare products.

Data reporting framework needed for meaningful benchmarking

Draft SPG 516 requires funds to compare outcomes against objective benchmarks. For funds to be able to meaningfully do this, there is also a need for a comprehensive data reporting framework that articulates the information needed to benchmark fund and system performance, and whether members' financial needs are being met.

We were pleased that APRA is focused on collecting and publishing new, more granular data and benchmarking performance and outcomes in key areas including investment performance, expenses, insurance and sustainability. We recommend that work in this area is given significant priority so that the proposed member outcomes test can be meaningfully implemented and be extended for both MySuper and Choice products.

Returns paid to a parent company should be further scrutinised

AIST supports the requirement in paragraph 98 for a RSE licensee paying a dividend or other return to a parent company to demonstrate that the level of payment is consistent with members' best interests. However, in light of the Financial Services Royal Commission's consideration of the conflicts inherent in such arrangements, AIST submits that further and more detailed guidance must be provided.

After noting the obligations imposed by section 52(2)(d) and SPS 521, the Commissioner noted *"care needs to be taken not to assume that their identification and purported management*

³ SuperRatings, Fee and Performance Analysis (2019). Available from: <https://www.aist.asn.au/getattachment/Media-and-News/News/2019/Fee-and-Performance-Analysis/aist-19performancefeeanalysis-final.pdf.aspx>

satisfies the obligations in the section. Rarely did entities identify how the interests of beneficiaries were prioritised over others that conflicted.”⁴

AIST submits APRA should make it clear that simply identifying the level of payment and comparing it with the payments made by other RSE licensees is unsatisfactory. Demonstrating that excessive payments have been made to parent companies and related parties on a widespread basis is no demonstration of promoting members’ interests. Rather, it simply highlights a systemic problem.

While the Commissioner did not conclude that a trustee of a retail fund could not act in the best interests of members, he nonetheless concluded that there were recurring difficulties to which funds and regulators needed to give close and continuing attention.

The essential character of the conflict that confronts the trustee of any fund established for the profit of its parent company or corporate group is the conflict between the commercial interest of the parent company – to maximise profit – and the trustee’s obligation to give priority to the duties to, and interests of, the beneficiaries. The conflict may emerge in any number of different ways.

One way the conflict may emerge is in the choosing of what entities should perform services in connection with the administration or investment of the fund, and fixing the fees or other remuneration that is to be paid to those entities. It is in the interests of the parent company to maximise the profits earned by the administration company. But the trustee’s duty is to minimise the amount it must pay for proper administration services.

As a result, dealings between the trustee and other entities related to the trustee of the fund always require special consideration. There will always be two groups of questions. First: how and why was the related entity chosen to provide the particular service? Were external entities considered? Second: how was the price for the service struck? Has the trustee compared what is offered from within the corporate group with the performance and pricing offered by entities outside the corporate group?⁵

Recommendation 4.14 calls for the additional scrutiny of related party insurance engagements, and AIST submits that the approach of that recommendation is applicable to both ownership of an RSE licensee by a parent company and related party arrangements generally.

⁴ Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Final Report, Volume 1 (2019), 227. Available from: <https://www.royalcommission.gov.au/sites/default/files/2019-02/fsrc-volume-1-final-report.pdf>

⁵ Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Final Report, Volume 1 (2019), 228-229. Available from: <https://www.royalcommission.gov.au/sites/default/files/2019-02/fsrc-volume-1-final-report.pdf>

For the purposes of outcomes assessment, AIST submits that RSE licensees should be required to provide certification to APRA that their payments to a parent company and to related parties are in the best interests of members. RSE licensees should be required to obtain a report from an appropriately independent and qualified firm certifying that a payment is in the best interests of members and otherwise satisfies legal and regulatory requirements. This should also apply to funds receiving services from organisations in which they have a controlling stake.

Consistent with Commission recommendation 4.14, that certification should be required every two years. AIST submits that the first period of certification should apply in respect of the 2019-2020 financial year.

Standardisation and consistency in publishing annual outcomes assessment

Draft SPG 516 (paragraphs 104-109) provides APRA's expectations in relation to the publication of the annual outcomes assessment but leaves it relatively open to the RSE licensee in how this assessment is presented. This has the potential to confuse and provides the opportunity for funds to use the publication of an annual outcomes assessment as a marketing tool.

In order for consumers to be able to easily compare products and make informed choices, the presentation of the annual outcomes assessment must be consistent across the industry. To facilitate this, we recommend that APRA consult with ASIC on providing further guidance on how this information should be presented and develop a standardised approach across the industry, whether Choice or MySuper.

Additional scale considerations

AIST recognises that scale is a consideration when seeking to promote the financial interests of members but notes that scale is more than just the size of a super fund or a super product. In addition to the key considerations listed in paragraph 95 of Draft SPG 516, we propose that the number of investment managers for each asset class and achievement of scale benefits at an asset class level is also considered. In this context, the long term sustainability of the fund should also be considered, addressing factors such as net cash flows, demographics and member growth, and analysis of trends in revenues and costs.

Eligible Rollover Funds

Finally, AIST submits that funds such as Eligible Rollover Funds that have an agreement in place to wind-down should be eligible to seek relief from some of the Business Performance Review requirements in the financial year in which they are closing.

For further information regarding our submission, please contact Zach Tung, Policy and Regulatory Analyst at [REDACTED] and David Haynes, Senior Policy Manager at [REDACTED].

Yours sincerely,



Eva Scheerlinck
Chief Executive Officer

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The Australian Institute of Superannuation Trustees is a national not-for-profit organisation whose membership consists of the trustee directors and staff of industry, corporate and public-sector funds.

As the principal advocate and peak representative body for the profit-to-members superannuation sector, AIST plays a key role in policy development and is a leading provider of research.

AIST provides professional training and support for trustees and fund staff to help them meet the challenges of managing superannuation funds and advancing the interests of their fund members. Each year, AIST hosts the Conference of Major Superannuation Funds (CMSF), in addition to numerous other industry conferences and events.