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Senate Standing Committees on Economics
PO Box 6100
Parliament House
Canberra ACT 2600

29 September 2017

Subject**: Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 1) Bill 2017**

Thank you for the opportunity to make comment on the above Bill.

Mercer is generally supportive of many of these measures:

- We support the proposed annual MySuper outcomes assessment, but not the proposal that trustees' determinations be publicly available, for the reasons set out in the Attachment. We would support the determination being provided to APRA on a confidential basis.
- We support the proposed amendments to provide APRA with greater powers to refuse, or cancel, an authority to offer a MySuper product.
- We do not support the director liability changes because they make superannuation trustee directors exposed to more personal liability than any other directors in Australia. If the Government does want to impose pecuniary penalties for breach of the SIS director covenants, we consider that it should align **all** aspects of the SIS liability regime with the managed investment scheme regime by, at the same time, removing the direct liability to members that superannuation directors currently have.
- We support the intent of the proposed provisions enabling APRA to prevent inappropriate changes in ownership of RSE licensees, but given that the vast majority of ownership changes do not fall into this category, in our view the proposed application and approval process is too cumbersome and drawn out. We have suggested the legislation also provide a streamlined application process.
- We support provisions to provide APRA with greater directions powers, but have some significant concerns with the provisions of the Bill as set out in the Attachment.
- Regarding the proposal for Annual Member Meetings (AMMs), we think the Bill as introduced includes some significant improvements on the consultation draft, but we still have a number of concerns. Not least of these is that, given the existing avenues for member inquiries, it is not clear that the benefits to members of providing AMMs will outweigh the costs, which we expect will be material.

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- Regarding the proposed changes to APRA reporting standards relating to expenses, in principle Mercer supports a requirement that trustees look-through to the ultimate purpose of any payment so that the trustee accurately reports the amount towards each type of expense. However the reasonableness and compliance costs of these requirements will also depend greatly on the actual reporting requirements ultimately specified in APRA standards, which at this point of time are extremely unclear.

Our detailed comments on the above measures and associated recommendations are set out in the Attachment.

Portfolio holdings disclosure

Mercer largely supports the amendments proposed in the Bill, which will make the portfolio holdings disclosure framework much more practical and less costly to implement, although the cost will still be substantial (estimated implementation costs for Mercer are in the hundreds of thousands of dollars).

Our main concern is with the proposed commencement date. There are still a considerable number of issues that need to be worked through via consultation before the necessary regulations relating to portfolio holdings disclosure can be issued, including how the information is to be displayed and the treatment of derivatives.

In our view the industry will need at least 9 months between the time the final regulations are issued and the first reporting date. The proposed first reporting date in the Bill of 31 December 2018 would therefore require the regulations to be issued by 31 March 2018 at the latest.

Given the complexity of some of the issues that have been identified in previous consultations and are yet to be dealt with, we are concerned that this will not allow adequate time for consultation.

We recommend that the first reporting date be moved out to 30 June 2019. We note that this would still be 6 months earlier than the first reporting date of 31 December 2019 specified in the ASIC deferral instrument issued only 3 months ago.

Who is Mercer?

Mercer is one of the world's leading firms for superannuation, investments, health and human resources consulting and products. Across the Pacific, leading organisations look to Mercer for global insights, thought leadership and product innovation to help transform and grow their businesses. Supported by our global team of 22,000, we help our clients challenge conventional thinking to create solutions that drive business results and make a difference in the lives of millions of people every day.

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Mercer Australia provides customised administration, technology and total benefits outsourcing solutions to a large number of employer clients and superannuation funds (including industry funds, master trusts and employer sponsored superannuation funds). We have over $150 billion in funds under administration locally and provide services to over 2.4 million superannuation members and 15,000 private clients. Our own master trust in Australia, the Mercer Super Trust, has around 230 participating employers, 224,000 members and more than $21 billion in assets under management.

Please contact me on [redacted] or by email if you would like to discuss this submission.

Yours sincerely

[redacted]

Dr David Knox
Senior Partner

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Attachment

This attachment reproduces comments from Mercer's submission on the consultation draft Bill and associated material. We have added comments in red where we have identified that our comments on the draft Bill are not relevant to the Bill as introduced as they have been partially or fully addressed.

We have adopted this approach due to the short time frame available for submissions and to highlight that the introduced Bill responded to some but not all of the issues we raised in our submission on the consultation material.

Please refer to the body of this letter for our comments on the portfolio holdings disclosure provisions, which were not part of the consultation draft Bill and associated material.

1. Annual MySuper outcomes assessment

The amendments require each trustee of a regulated superannuation fund to make an annual determination, in writing, as to whether the financial interests of the members in the MySuper product are being promoted by the trustee, having regard to a range of factors.

The amendments will replace the scale test with a new outcomes test, which will require trustees to assess whether their MySuper product is optimising outcomes to members by considering a range of product features including their insurance and investment strategies, and comparing how their product is performing against other MySuper products using certain performance metrics.

The more comprehensive assessment of MySuper products is intended to make trustees more accountable for their MySuper products and enhance APRA's ability to take specific action to ensure the trustee rectifies the performance of their MySuper product where the financial interests of members are not being effectively promoted.

Mercer comment: We support the policy intent as it represents a broader and more holistic test.

Annual determination process

The determination is to follow a two-step process:

(1) The first step is for the trustee to make assessments on each of the following matters:

- whether the options, benefits and facilities offered under the MySuper product are appropriate to those beneficiaries;
- whether the investment strategy for the MySuper product, including the level of investment risk and the return target, is appropriate to those beneficiaries;

- whether the insurance strategy for the MySuper product is appropriate to those beneficiaries;
- whether any insurance fees charged in relation to the MySuper product inappropriately erode the retirement income of those beneficiaries;
- whether there are problems of scale in relation to the MySuper product; and
- any other relevant matters, including those prescribed in the regulations.

Mercer comment: We support these requirements.

(2) The second step is for the trustee to make a comparison of the MySuper product against other MySuper products using the following metrics:

- the fees, costs and taxes that affect the return of the beneficiaries holding the MySuper products;
- the return target for the MySuper products;
- the return for the MySuper products;
- the level of investment risk for the MySuper products; and
- any other matter prescribed in regulations.

Mercer comment: We generally support these requirements, however ***we recommend****:*

- *The comparison be required to take into account:*
  - *the nature and quality of the benefits and services being provided, as indicated by APRA in APRA Insight Issue 1 2017*
  - *the competitiveness of insurance benefits and premiums - this is particularly important as the member characteristics vary between funds*
  - *the characteristics of the fund's MySuper membership – the trustee is required to develop its MySuper product to promote the financial interests of its membership and it would be inappropriate for the trustee to be required to compare against other MySuper products that would not be suitable for its MySuper members.*

  The Bill introduced allows for other matters to be specified in regulations.
- *The reference to tax in the first point be removed. The objective should not be to minimise tax but to maximise net returns after tax and fees. Requiring comparisons of tax will add additional cost for little or no benefit. This recommendation has been acted on.*

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Making annual determinations publicly available

It is proposed that trustees' determinations be made annually in writing and publicly available.

Mercer comments:

- *The policy reasoning for making the determination publicly available is not clear, nor is the extent of information proposed to be required in the publicly available determination.*
- *We note peer comparisons and other details of the assessment are likely to contain what would normally be regarded as commercially sensitive information.*
- *Furthermore preparation of the information in a form suitable for public disclosure will add another layer of cost to the annual determination exercise.*
- *Even if the publicly available information is simply whether the determination was positive or negative, we are concerned that disclosure of a negative determination would effectively be a signal to the market, including members, that the fund was underperforming, didn't expect to be able to remedy this and would be seeking to merge into another fund. In our view such disclosure would likely be detrimental to the interests of members as a whole, as it would be likely to result in a high level of members switching out and in the extreme provoke a run on the fund.*
- ***For these reasons we do not support making the annual trustee determination publicly available. We would support the determination being provided to APRA on a confidential basis**.*

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2. Authority to offer a MySuper product

The amendments will allow APRA to refuse, or cancel, an authority to offer a MySuper product if APRA has a reason to believe the RSE licensee may fail to comply with its obligations.

We support these amendments

3. Director penalties

New section 29VPA(2) makes section 29VPA(1) a civil penalty provision. This means that a superannuation trustee director who fails to exercise a reasonable degree of care and diligence for the purposes of ensuring that the trustee carries out its MySuper obligations under section 29VN will be subject to both civil and criminal sanctions under Part 21 of the SIS Act **and** will be exposed to civil claims for loss under section 29VPA(3) (as at present).

New section 55AA inserts a civil penalty provision for breaches of a director's covenants under section 52A. This means that a director who breaches a covenant under section 52A will be subject to both civil and criminal sanctions under Part 21 of the SIS Act **and** will be exposed to civil claims for loss under section 55(3) (as at present).

We do not agree with these changes because they make superannuation trustee directors exposed to more personal liability than any other directors in Australia. This is because the MySuper director obligations and the director covenants would carry both direct liability to individual members for loss arising from a breach **plus** liability for civil penalty sanctions. To impose such an onerous exposure on superannuation trustees may well deter highly skilled professional directors from being willing to serve on superannuation trustee boards.

Paragraph 4.3 of the explanatory memorandum states that the changes are being made in order to align the penalty regime for superannuation trustee directors with the penalty regime applying to directors of responsible entities of managed investment schemes, as recommended in the Final Report of the Financial System Inquiry (FSI). However this recommendation failed to recognise that directors of responsible entities do **not** have direct personal liability to individual scheme members, as do superannuation trustee directors.

The penalty regime for managed investment schemes is constructed differently from the SIS Act. Under Chapter 5C of the Corporations Act, a breach of a director's statutory duties is a civil penalty provision.[1] In addition, an intentional or reckless breach of a director's statutory duties is an offence carrying 2000 penalty units, 5 years' imprisonment or both.

However, under the managed investment scheme regime, directors of a responsible entity (RE) have no direct liability to individual scheme members for a breach of their statutory duties. Rather, once the court makes a declaration that a civil penalty provision is breached, ASIC can seek both a pecuniary penalty (up to $200,000 payable to ASIC) if the breach is serious and materially

[1] These duties also apply to other 'officers' of the RE.

prejudices the interests of the scheme or its members. In addition, the court may order compensation to be paid to the scheme on application by ASIC or the responsible entity.[2]

As such, there is no direct civil liability to members of the scheme. Instead, if a court finds that an RE director has breached his or her statutory duties, the court may award compensation *to the scheme* (but not to individual scheme members).

By way of comparison, under the SIS Act there is civil liability for loss (owed directly to members) for breach of a My Super director obligation or director covenant.[3] This means that a superannuation director could be sued by an individual member or by a class of members who allege that they have suffered loss as a result of a breach.[4] This threat of class actions is already a deterrent and, anecdotally, we understand that many professional directors are seeking extensive indemnities from the trustee company itself before they are prepared to assume office.

If the proposed changes are made, superannuation trustee directors will have direct civil liability to members for loss (and exposure to class actions as at present) but will also face the prospect of pecuniary penalties payable to the regulator and criminal sanctions for intentional or reckless breach of the covenants.

Recommendation

If the Government does want to impose pecuniary penalties for breach of the SIS director covenants, we consider that it should align ***all*** *aspects of the SIS liability regime with the managed investment scheme regime by, at the same time, removing the direct liability to members that superannuation directors currently have. In other words:*

- *sections 29VAP(3) and 55(3) would be removed (or limited) so that fund members would no longer be able to sue a director personally for a breach; and*
- *any compensation payable by the director would be awarded by the court on application by APRA or the trustee and such compensation would be payable to the fund, not to individual members, under a new provision similar to sections 1317H and 1317J of the Corporations Act.*

[2] Corporations Act, s 1317H and s 1317J, As with SIS, there are powers for the court to give judicial relief to persons who have acted honestly and ought fairly to be excused having regard to all the circumstances.
[3] SIS Act, s.55(3)
[4] Subject to leave of the court: see SIS Act, ss 55(4A) – (4D)

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4. Approval to own or control an RSE licensee

We are supportive of APRA having the necessary authority to protect members' interests, including the ability to intervene with a change of ownership if there are concerns about the new owner. However we are concerned that the proposed process will impose an unnecessary degree of red tape and potential delays on the vast majority of ownership changes which do not raise any APRA concerns.

Recommendation

To streamline the application process and avoid unnecessary delays, we recommend that the legislation provide for an exceptions process whereby RSE Licensees provide notice (say, 30 days) of a change in ownership, during which time APRA may request further information or require the transaction go through the full approval process. Otherwise, approval is deemed to have been granted.

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5. APRA directions power

Para 6.1 from the draft EM has been split into two paras, hence add one to the EM references below (to the draft EM) to align with the EM as introduced (e.g. 6.2 become 6.3).

We support APRA having a directions power to enable "*early intervention*" [EM para 6.2] "*to resolve or address a prudential concern before it results in significant detriment to fund beneficiaries*" [EM para 6.7, emphasis added] as recommended by the FSI as part of "*strengthening [*APRA's*] crisis management powers*" [EM para 6.8, emphasis added].

However, we feel that the proposed directions power in Part 16A goes far beyond that needed to achieve those objectives. Our concerns with the broad directions power drafted into Part 16A include:

(1) Should be confined to where there is an urgent need to avoid significant detriment

Superannuation is already highly regulated and each provision in superannuation law already has one or more robust enforcement mechanisms.

Para 6.24 of the EM states "*… the requirement that APRA has 'reason to believe' (in this, and other conditions for giving directions) means that all of the formal proceedings that must be undertaken to establish that a contravention has actually occurred do not need to be resolved*". And may in fact never be resolved.

Critically, the robust mechanisms that ensure due process - that the law (and importantly penalties under the law) are only enforced where a person has actually breached the law - will not apply to the exercise of this new directions power. Hence, Part 16A should be clear that this directions power should only be used in rare circumstances where:

a. the urgency of the need to protect members and assets; and
b. the magnitude of the likely detriment,

outweigh normal due process that would determine whether the law has in fact been breached.

And at a minimum, the requirement in proposed section 131D(1)(d) for the direction to be necessary in the interests of beneficiaries should be a pre-condition to exercise of the power, not a ground for exercising power.

Recommendations

- *the use of the new directions power should be confined to urgent situations, where the existing enforcement mechanisms (already in place for breaches of that provision of*

superannuation law) would not be adequate to avoid significant detriment to beneficiaries (or fund assets)

- *the requirement in proposed section 131D(1)(d) for the direction to be necessary in the interests of beneficiaries should be a pre-condition to exercise of the power, not a ground for exercising power.*

(2) Creates an offence where none existed

Failing to comply with a direction is an offence (section 131DD). It is a strict liability offence.

APRA may give a direction if "it has reason to believe" or "if it believes that is likely" that a contravention may occur. The contravention need not be proven and APRA may hold a belief of this kind even where a contravention in fact has not occurred and will not occur.

As quoted above - "*However, the requirement that APRA has 'reason to believe' (in this, and other conditions for giving directions) means that all of the formal proceedings that must be undertaken to establish that a contravention has actually occurred do not need to be resolved*" [EM para 6.24]. And may in fact never be resolved.

This means that there is a real risk that an RSE will be exposed to penalties under the new directions power even where it did not commit any breach of the superannuation law provision (that was the subject of the direction).

Recommendation

Include defences for RSEs set out below.

(3) Double Jeopardy

The penalties for failing to comply with a direction are in addition to any penalties under the superannuation law provision (that was the subject of the direction).

This means that a single act by an RSE potentially exposes them to double penalties. In fact, it potentially exposes them to new penalties for every day that the RSE does not comply with the direction (section 131DD(5)(b)). These cumulative penalties could far exceed the original penalties that apply for breach of the superannuation law provision (that was the subject of the direction).

Recommendation

Include defences for RSEs set out below.

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(4) Natural justice and due process

Part 16A should only permit a direction to be given in circumstances that are reasonable – in particular:

1. the direction must be capable of being complied with (otherwise it just creates double jeopardy for same breach – see above);

2. the RSE must be given reasonable notice of APRA's intention to give that direction and be given an opportunity to present evidence to dispel the belief that a breach of superannuation law is likely to occur. This is a fundamental principle of natural justice and is particularly important given the seriousness of the proposed penalties for failing to follow a direction – in particular, the strict liability of the penalties under section 131DD and their cumulative effect;

3. there must be a reasonable time for an RSE to comply. Under proposed section 131DD(5) an offence is committed the day the direction is received (and not complied with) and on each day after that (that it is not complied with). There is a real risk of cumulative penalties that could far exceed the penalty that would have applied for the superannuation law provision (that was the subject of the direction);

4. the direction must be reasonable in all the circumstances taking into account the superannuation law provision (that is the subject of the direction), the governing rules of the fund and the other reasonable actions that an RSE could have legitimately taken to avoid the significant detriment to members or assets of the fund (anticipated by the direction).

Recommendations

– *include defences for RSEs set out below*

– *Part 16A should require APRA to give an RSE reasonable notice of APRA's intention to give that direction and be given an opportunity to present evidence to dispel the belief that a breach of superannuation law is likely to occur.*

Recommendation - Proposed defences

For the reasons set out above, include the following defences to not complying with a direction:

1. *Where the RSE can show that no breach of the superannuation law provision (that was the subject of the direction) in fact occurred; for example, because the events that would have caused the breach did not in fact occur or because an RSE has sought directions from a court*

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2. *Where the RSE can show that it was reasonably likely (at the time that the direction was not complied with) that a breach of the superannuation law provision (that was the subject of the direction) in fact would not have occurred*

3. *Where the RSE was not given reasonable notice of APRA's intention to give that direction and/or was not given an opportunity to present evidence to dispel the belief that a breach of superannuation law was likely to occur*

4. *Where the direction was not in fact capable of being complied with. (In that case, any penalties and any defences available to the RSE, should be as set out in the superannuation law provision (that was the subject of the direction))*

5. *Where the RSE has not been given a reasonable time to comply with the direction*

6. *Where the RSE reduced the significant detriment (anticipated by the direction) by some other means*

7. *Where not complying with the direction was reasonable in all the circumstances taking into account the superannuation law provision (that is the subject of the direction), the governing rules of the fund and the other reasonable actions that an RSE took (or could have taken) to reduce the significant detriment to members or assets of the fund (anticipated by the direction)*

8. *Where, under the superannuation law provision (that was the subject of the direction) a penalty or enforcement action has already been imposed or taken (or is reasonably likely to be imposed or taken).*

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6. Annual members' meeting (AMM)

We strongly disagree with the Explanatory Memorandum that many superannuation members have little to no ability to ask questions about their fund. We note that members can and do contact their superannuation fund via telephone, email and letter; and that there are existing requirements for funds to respond to member inquiries and complaints.

Given the existing avenues for member inquiries, it is not clear that the benefits to members of providing AMMs will outweigh the costs, which we expect will be substantial.

Electronic meetings

If AMMs are to be required, for cost efficiency and accessibility we strongly support the draft provisions enabling these to be held electronically. **We query whether** the provisions need to specifically state that an electronic meeting will be deemed to satisfy the requirements for all MySuper members to have the same access to options, benefits and facilities, other than insurance (SIS s29TC(1)(b)).

This concern remains.

Annual report requirement

The AMM proposals have implications for 'annual report' structure and timing. Funds currently have 6 months after year end to provide annual fund information and the information can be spread over a number of documents – hence 'annual report' would need to be defined. Based on the draft legislation, the AMM needs to be within 5 months of year-end and 21 days' notice is required, with the annual report and any other information specified in regulations required to be included with the notice – hence this would effectively reduce the annual report completion timing from 6 months to 4 months or less (which would be challenging for some funds) and appears to require a single document.

To allow time for further consideration and consultation, as well as greater flexibility, **we suggest that** the specific requirement for the annual report to be included with the meeting notice be excluded from the legislation and dealt with in regulations as is envisaged with other information.

The concerns in this section have been addressed.

Funds with employer sub-plans

The AMM proposal raises special issues for funds such as the Mercer Super Trust (MST) which has a large number (around 200) employer sub-plans:

- Currently the MST produces an annual report comprised of two components - a general fund information report that goes to all MST members and a supplementary report for each

sub-plan with information specific to that sub-plan. A compression of the timeframe for preparing the annual report would therefore impact around 200 reports for the MST. We also note that the general report is publically available but there is currently an exemption from making sub-plan supplementary reports publicly available while the Government considers appropriate policy on this matter.

- We would not support a requirement that an AMM be held for each sub-plan, as this would add substantially to the cost. We also note that most sub-plans have Policy Committees which provide an additional avenue for members to raise questions and concerns with the trustee. Is the AMM proposal intended to have any impact on the role of policy committees?
- However the legislation should allow a trustee to hold separate AMMs for different membership segments of a fund (such as a large sub-plan); where separate AMMs are held for different membership segments, all members of the relevant segment (and only those members) would be required to be notified of the relevant AMM.
- In our view it would not be appropriate, both for reasons of confidentiality and for lack of relevance to other attendees, for questions regarding sub-plans to be required to be answered at AMMs (unless it is an AMM only for that sub-plan)
- Attendance of actuaries: The MST has around 80 defined benefit (DB) sub-plans and 25 sub-plan actuaries. Actuarial investigations are conducted for each DB sub-plan and not for the overall fund. On our reading, the draft legislation would require every actuary to attend the AMM, which would clearly be impractical as well as costly. We also note that under proposed s29P(5)(e) questions can be restricted to an actuarial investigation of the fund within the prior 5 months or the prior income year, which would not apply for the MST as actuarial investigations of the overall fund are not conducted and sub-plan investigations are not a relevant matter for questions under the draft legislation. We think this restriction is appropriate, as it would be inappropriate for questions regarding the actuarial investigation of a sub-fund to be answered at AMMs.

In regard actuarial investigations generally, an investigation may be in progress at the time of an AMM - we suggest it would be inappropriate for an actuary to be required to answer questions about the investigation (e.g. its potential findings) in these circumstances.

The above concerns remain, although the Bill introduced does allow for regulations to make additional exclusions from the questions that are required to be answered. It appears to us that the Bill would require all 25 MST sub-plan actuaries to attend each AMM, even though:

- None of them would have conducted an actuarial investigation of the overall fund during the year;
- Many of them may not have conducted an actuarial investigation of a sub-plan during the year, as these are only conducted every three years in most cases.

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Recommendations

For the issues outlined above and to improve the flexibility of AMMs, we recommend that:

1. *Consideration be given to whether the provisions need to specifically state that an electronic meeting will be deemed to satisfy the requirements for all MySuper members to have the same access to options, benefits and facilities, other than insurance (SIS s29TC(1)(b)).*
2. *The requirement for the annual report to be included with the meeting notice be excluded from the legislation. Alternatively, the timing of the AMMs could be amended to after the annual reporting has been completed. Addressed in Bill.*
3. *The time for holding the AMM be more flexible, so that timing could be aligned with special events, for example a fund merger or the launch of a new product or a change in default insurance arrangements. Addressed in Bill.*
4. *To reduce costs, not all directors should be required to attend. Addressed in Bill.*
5. *Only an actuary who has undertaken an actuarial investigation of the fund (not a sub-plan) within the prior 5 months or the prior income year should be required to attend.*
6. *The types of questions that would not require responses should be expanded to include:*
    - *questions about a matter which relates to a sub-plan*
    - *questions about an actuarial investigation that is in progress at the time of an AMM*
    - *questions where responding would involve commercial-in-confidence information that relates to third parties – for example an employer planning a redundancy program may confidentially make the trustee and actuary aware of this as it may affect fund cash flow and/or defined benefit investment strategy*

    Addressed in Bill via facility for regulations to specify further exclusions.
7. *Flexibility be incorporated so that a trustee could hold separate AMMs for different membership segments of a fund, and that a single AMM could cover a number of funds applicable to a single trustee; where separate AMMs are held for different membership segments, all members of the relevant segment (and only those members) would be required to be notified of the relevant AMM*

    We believe this flexibility is intended but this could be made clearer.
8. *Flexibility for the trustee to allow questions to be raised in advance of the meeting*

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7. Reporting standards

The amendments enhance the ability of APRA to collect information in relation to a transaction between an RSE licensee and another entity where the money, consideration or other benefit originated from the assets of an RSE of the RSE licensee.

In principle Mercer supports a requirement that trustees look-through to the ultimate purpose of any payment so that the trustee accurately reports the amount towards each type of expense. We also support requirements for trustees to be able to demonstrate they have made appropriate enquiries of providers in order to properly categorise expenses, though we think this should rarely be necessary. We would expect that a trustee would know the purpose of a payment before making it. We would be concerned if these powers are to be directed at requiring service providers to provide detailed breakdowns of their pricing into sub-categories of services, as this could add substantially to compliance costs and potentially introduces commercial confidentiality issues.

At the Melbourne round-table, APRA indicated that look through would stop at the first non-associated entity, as applies with the investment expense look-through. We understand this may be a practical implication of constitutional law. However in the interests of certainty and clarity we would prefer that **the final provisions include an explicit limitation of expense look-through to the first non-associated entity.**

The reasonableness and compliance costs of these requirements will also depend greatly on the actual reporting requirements ultimately specified in APRA standards, which at this point are extremely unclear (at least to us). For example:

- if the categories of expense are to be expanded, what the new categories are and how many there are.
- When and how a ‘chain of transactions’ may need to be reported to verify the ultimate purpose of a payment
- If and how a service provider that services the fund and other clients is supposed to advise how it applies the revenue from each client and what purpose providing this information would serve.
- The potential for commercially sensitive information to be collected and publicly disclosed.

We understand that APRA will be consulting about the details of the proposed new reporting requirements and we look forward to the opportunity to provide our input to that consultation.