

ISN SUBMISSION

**SUPERANNUATION LEGISLATION  
AMENDMENT (SERVICE PROVIDERS AND  
OTHER GOVERNANCE MEASURERS) BILL  
2012**

**ISN SUBMISSIONS TO  
THE PJCON  
CORPORATIONS AND  
FINANCIAL SERVICES**

January 2013

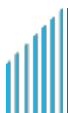
SB1339



**Industry  
Super  
Network**

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# | EXECUTIVE SUMMARY

Industry Super Network welcomes the Superannuation Legislation Amendment (Service Providers and Other Governance Measurers) Bill 2012. Much of the Bill implements expected and consequential changes to the MySuper regime and has been the subject of previous consultation with the industry.

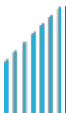
ISN particularly welcomes the proposed changes to the *Superannuation Industry (Supervision) Act 1993* which are intended to ensure the use or continued use of service providers are in the best interests of beneficiaries.

Whilst ISN also welcomes the proposed changes to the defences available to a trustee or director, further changes are proposed. It is suggested that the amendments proposed by ISN better reflect the intent to the Bill as outlined in 5.24 of the exploratory memorandum.

In his second reading speech relating to the Superannuation legislation (Further MySuper and Transparency Measurers) Bill 2012 the Minister indicated that the Government would revisit certain matters relating to the product dashboard requirements. In these submissions ISN makes proposals relating to the product dashboard requirements.

ISN notes that an industry roundtable has been called to discuss matters relating to the product dashboard and as a consequence ISN's position may change to reflect any industry consensus reached on related issues.

In addition ISN also suggests amendments relating to fee caps on asset-based administration fees and anti-avoidance measures for transition to MySuper.



## 1. Tranche 4 provisions

### Service Providers - provisions in Governing rules - Schedule 1, item 68, subsections 58A(2-4)

ISN supports the amendments to the SIS Act to void any provisions in a fund's governing documents that require the use of specified service providers or products. Whilst we welcome the ability of funds to enter into or continue arrangements where it can be demonstrated that the arrangements are in the best interests of members.

To ensure consistency with subsection 58A(2-4) existing contracts that are not consistent with the best interests of beneficiaries should not be allowed to continue insofar as they apply to or have a detrimental impact upon an interest in a MySuper product.

The proposed change is consistent with the trustees' overarching obligation to act in the best interests of members.

The wide definition of service provider to include but not be limited to investment managers, custodians, administrators, clearing houses and professional service providers is supported. Similarly the voiding of rules that require the assets of a fund to be invested in a managed investment scheme, life insurer, pooled superannuation trust and other unit trusts and ADIs are welcomed.

It is entirely appropriate that trustees will be required to determine whether the continuation of the existing contractual arrangements for the provision of services is consistent with the obligation to act in the best interests of members.

It is recognised that the amendments to the SIS Act are reinforced by the introduction of prudential standards which take effect on 1 July 2013. Of particular relevance are SPS 231 Outsourcing and SPS 521 Conflicts of Interest.

#### **Recommendation:**

That sub-sections 58A(2-4) be amended to ensure that existing contracts that are not consistent with the best interests of MySuper beneficiaries be discontinued.

### APRA infringement notices – Schedule 1, item 109, Part 22

The insertion of a new Part 22 into the SIS Act to provide APRA with the ability to issue infringement notices as an alternative to court action for limited breaches (which can be added to by way of regulation) is welcomed, as is the discretion provided to APRA to withdraw a notice of contravention.

The insertion of the additional offence for continuing offences in section 194A is not supported in its current form. It is suggested that Part 22 currently allows for the application of multiple infringement notices by APRA and does not limit the Court's discretion to determine penalty amounts. Whilst ISN agrees that continued contravention should be the subject of additional penalties, it is suggested there are currently adequate processes for this concern to be addressed.

### Reasons for decision – Superannuation Complaints Tribunal - Schedule 1, item 70, subsection 101 and 14(6A)

ISN is supportive of the changes that require trustees to provide reasons for decisions in relation to death benefit complaints and in relation to other complaints on request.

ISN is also supportive of extensions to the time limits to lodge a complaint with the Superannuation Complaints Tribunal to, (depending on the circumstances), six years or four after decision.

## Dual regulated entities – Schedule 1, item 5 paragraph 912A

The amendment to the Corporations Act that RSE licensees that also manage non-superannuation registered managed investment schemes will be required to have available adequate resources and risk management systems is supported.

This change will ensure that risks relating to the non-superannuation businesses of the entity are captured by the risk management systems and requirements.

## Actions for breaches of director's duties – Schedule 1, item 65, subsection 55, item 43, section 29VPA, item 111, paragraph 323(1)

ISN welcomes the new requirement upon a person who has suffered a loss due to a director's contravention of duties under the SIS Act to seek leave from the court before bringing a civil action. The Court must determine that the action is in good faith and that there is a serious question to be tried. The extension of the defence of having acted with reasonable precaution (section 323) to cover breaches of MySuper obligations by trustees and directors is also welcomed.

Whilst all statutory and fiduciary obligations should be adhered to, ISN is concerned that the proposed regime would result in a proliferation of litigation to the overall detriment of beneficiaries.

It is suggested that the onus of proof upon trustees that they have adhered to the covenants contained in s52 of the SIS will encourage broad claims of failure on the part of the trustees. Rather than mount a costly exercise of discharging their onus of proof, it is more likely that trustees will settle most claims. Whilst the requirement to seek leave from the Court to commence an action will have a welcome impact; in the absence of a requirement that there be a nexus between an alleged breach and a purported loss, it is expected that the current arrangements will encourage a significant growth in litigation.

### **Nexus between cause and loss**

Whilst supporting amendments that require the court to determine if an action is being brought in good faith and if there is a serious question to be tried, it would be appropriate that a plaintiff's allegation of particular loss or damage suffered be sufficiently connected with the alleged breach of duty.

ISN supports enhanced requirements upon directors, including the central requirement that they act in the financial best interests of beneficiaries. However, the current litigation threshold is relatively low and is likely to be readily met. It is suggested that the proposed tests will not unduly limit frivolous and vexatious claims.

It is suggested that to justify the imposition of an order, the proposed regime would only require the applicant to demonstrate that there is an indication of an infringement to one of the many enhanced duties upon trustees or directors. This indication would provide a basis for the claim which, provided the claim is not patently vexatious or frivolous, justifies the imposition of an order.

As a matter of principle, ISN supports the "serious question to be tried" test; as it does not unduly restrict the ability of a litigant to make claims. The proposed test will not require the court to enter into the relative merits of the claim or ascertain the claim's chance of success. The test will do no more than assess whether there is an indication of a real question of fact or law between the parties.

ISN is concerned that there remains an insufficient link between an alleged breach of a duty by a director or trustee and the particular loss or damage suffered. In the context of new enhanced obligations that are strict liability provisions and a relatively low litigation threshold, it is appropriate that a sufficient nexus between loss and breach be established.

We also recognise that it is open to APRA to make submissions to the Court and provide relevant prudential guidance which may be relevant in any court proceedings.

Paragraph 5.24 of the Bill's Explanatory Memorandum suggests that the proposed changes to the SIS Act provide a defence to trustees or directors where they can demonstrate that they have met their MySuper obligations in relation to each claimed act or failure to act that has resulted in a loss. The EM states that this proposed change creates the necessary nexus between the act or omission and the claimed loss. Whilst the intention is supported, it is suggested that the amendment fails to achieve this end.

It remains that case that before a trustee or director could rely upon this defence they would be required to establish that they have complied with all covenants that were potentially relevant to the loss.

ISN proposes the following amendment which would give better effect to the policy intention stated in paragraph 5.24 of the EM:

We suggest that the last words of subsection 55(5) of the Superannuation Legislation (Trustee Obligations and Prudential Standards) Bill 2012 be amended to omit *"to the investment"* and substitute *"the particular loss or damage suffered"*. And that in the similarly worded subsection 55(6) the words *"to the management of the reserve"* be omitted and substituted by *"the particular loss or damage suffered"*. It is submitted that these changes better reflect the stated policy objectives.

Bill's amendment:

*"It is a defence to an action for loss or damage suffered by a person as a result of the making of an investment by or on behalf of a trustee of a superannuation entity if the defendant establishes that the defendant has complied with all of the covenants referred to in sections 52 to 53 and prescribed under section 54A, and all of the obligations referred to in sections 29VN and 29VO, that apply to the defendant in relation to the investment each act, or failure to act, that resulted in the loss or damage."*

ISN's proposed change

*"It is a defence to an action for loss or damage suffered by a person as a result of the making of an investment by or on behalf of a trustee of a superannuation entity if the defendant establishes that the defendant has complied with all of the covenants referred to in sections 52 to 53 and prescribed under section 54A, and all of the obligations referred to in sections 29VN and 29VO, that apply to the defendant in relation to the investment the particular loss or damage suffered."*

## Other measures and consequential amendments

**Trust deed provisions - Schedule 1, item 69, subsection 68C** - The making ineffective of provisions in trust deeds that prohibit a director or trustee from voting on a matter (except where there is a conflict of interest) is supported.

**Large employer exemption- Schedule 1, item 47, section 29WB** – ISN supports amendment to ensure that, where a tailored MySuper product is utilised, all MySuper contributions made on behalf of employees of an employer must be paid into that tailored product unless the employee has directed otherwise in writing.

**Administrative fee exemption – Schedule 1, item 42, paragraph 28VB.** ISN also supports the prohibition of different administrative fees being charged to employees in relation to a tailored large employer MySuper product. Properly this should ensure that all employees must be charged the same administration fee. ISN believes that the use of general anti-avoidance provisions would be appropriate where it could be demonstrated that employees within a group were being employed by a different legal entity for the primary purpose of avoidance of this requirement.

**Switching advice – Schedule 1, item 7, paragraph 947D.** ISN supports the extension of the switching advice requirements in the Corporations Act applying to financial products to MySuper products.

**Deceased members – Schedule 1, item 39, paragraph 29TC(1)** – The recognition that after death it is not possible to obtain written consent and allowing the trustee the discretion to move the member's interest in the fund to another class of beneficial interest, is supported.

**Fit and proper requirements – Schedule 1, Item 71, subparagraph 107-108** -The insertion of the fitness and propriety criteria contained the relevant APRA prudential standard into the SIS Act, is supported.

**Obligation to pay contributions to a MySuper product – Schedule 1, item 44, paragraph 29WA(1)** - Amendments to the MySuper Core Provisions Act that clarify that it is necessary for a member to make a written direction to have contributions placed in a particular investment option other than a MySuper investment option is supported.

**Expected compliance consideration - Schedule 1, item 115, item 11A of Part 2 of the Core Provisions Act 2012** – ISN supports the amendment that when assessing MySuper authorisation applications, APRA will have the ability to consider the trustees expected compliance with enhanced MySuper obligations.

## 2. Outstanding matters

### 2.1 Product dashboard

There are significant unresolved issues with the legislative design and implementation of the Product Dashboard which must be addressed in Tranche 4 of the Stronger Super Legislation and in ongoing consultation with APRA and ASIC. The key issues include:

1. The need to ensure the investment return target for the dashboard is net of all fees (including administration costs) to ensure it reflects what a member would actually be entitled to receive;
2. Retaining the historical investment performance of an option relative to the investment return target in the dashboard but amending it to ensure it is on an equivalent basis (i.e. average return over 10 years), and in the case of new products requiring a proxy return measure;
3. Clarifying the nature and purpose of the liquidity measure in the dashboard to ensure it is relevant to the member, does not increase prudential risks, and does not discourage fund trustees from targeting appropriate allocations of illiquid investments such as infrastructure;
4. Clarifying carve outs from the dashboard requirements.

In addition to these four issues the proposed risk measure for the product dashboard is deficient and will result in misleading information being provided to consumers. The primary purpose of the product dashboard is as a consumer tool to allow comparisons between products. This goal should be kept front of mind.

Addressing the four core issues will require a combination of amendments to the legislative framework of the Product Dashboard and a more thorough explanation of the intended application of the legislative requirements of the product dashboard in the Explanatory Memorandum.

The problems with the dashboard have become clearer following APRA's consultation on the Stronger Super data standards and dashboard design. It is clear from follow up discussions with APRA that the legislative provisions and explanatory memorandum for those provisions in the Tranche 3 legislation provided little if any guidance on the policy objectives and member benefits of the dashboard in the broader context of MySuper. While timing issues prevented addressing the dashboard framework in Tranche 3 the Minister has indicated that it could be dealt with subsequently.

Accordingly it is suggested that the Superannuation Legislation Amendment (Service Providers and Other Governance Measures) Bill 2012 be amended by deleting the new S 1017BA of the Corporations Act 2001 inserted by the *Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Act 2012* and it is replaced with a new S 1017BA and corresponding explanatory material which addresses the

four key areas identified above. This would provide greater clarity for industry participants. In the context of new regulatory requirements that are subject to strict liability, the more certainty provided the better.

### 2.1.1 Investment return target S 1017BA (2)(a) and S1017BA (5)

The Bill in its current form does not require investment return targets to be calculated net of administration fees. The Bill as currently drafted will inevitably result in misleading information being provided to consumers. ISN proposes an alternative which is net of investment and administration costs and is consistent with the policy intent that consumers be better informed and empowered to compare MySuper products.

The legislation is ambiguous about what actually constitutes an investment return; however APRA and Treasury have indicated that the measure will be net of investment management costs only, and will exclude the impact of administrative fees. Such an outcome will not only mislead members and potential members about the returns to which they could expect and be entitled and will inevitably bias product design in such a way that investment management fees are minimised and administrative fees maximised. Such an approach is also inconsistent with international best practice and contrary to the Cooper Review's recommendations. This outcome would be perverse and not in the public interest.

It is suggested that the complicating factor is the use of dollar based administrative fees in product design. A solution to the use of dollar based administrative fees is already widely used in the industry in Product Disclosure Statements and regulatory requirements for forecasting retirement benefits (see RG229 and CO 11/1227 which include standardised assumptions, including account balance assumptions of \$50,000). Such approaches could be easily adapted to produce comparable investment return targets.

#### **Solution – Use of standard account assumptions:**

A standardised investment return target methodology for the product dashboard could easily be designed to include all investment management and administrative fees by utilising standard account balance and contribution assumptions thus allowing the impact of dollar based administrative fees to be easily integrated with percentage based investment management and administrative fees.

Whilst the outcome may be slightly different if a member's account balance is higher or lower than the standard assumption (or if the fund average account balance is different) it is important to recognise that the product dashboard's primary purpose is of a comparative nature. Member specific information is available via member access areas on fund websites and member statements.

The approach proposed by ISN empowers consumers as it allows a consistent comparison of fund return targets which are net of all costs and will align a member's experience in a fund with the statements made by the fund.

#### **Recommendation:**

S 1017BA (2)(a) be amended to read:

*(a) the net investment return target for the product*

S 1017BA (5) be amended to include an additional definition along the following lines

***net investment return**, in relation to a MySuper product offered by a Regulated Superannuation Fund means an investment return to which a member would normally be entitled after the deduction of all fees as defined in this section.*

The explanatory memorandum be amended to provide further context for the dashboard investment return target including that its purpose is to be of a comparative nature and take into account all fees (including investment management and administration) that could ultimately affect the actual returns to which a member would be entitled.



### 2.1.2 Historical investment returns S 1017BA (2)(b)

During consultations APRA received some feedback about the practical application of S1017BA (2)(b). Concerns which were raised related to the lack of alignment between (2)(a) and (2)(b). The former relates to the target investment return (in effect an average measure) whereas (2)(b) requires information on the number of years in the last ten where the target has been achieved (in effect a measure of volatility). Secondly APRA has expressed concerns about how the requirement would apply for new products with no investment track record.

These issues can be overcome and it would be completely inappropriate to remove the historical returns requirement from the dashboard as has been proposed.

A properly designed requirement will provide valuable information to members or prospective members about the investment return claims of the fund outlined in (2)(a), and make trustees accountable for setting realistic targets for the product. Extending the requirement to ensure realistic proxy historical returns are disclosed will ensure there isn't an inherent bias in the dashboard to new low cost products and also discourage phoenix activity where products are closed and new ones opened as soon as poor performance becomes evident.

#### **Solution:**

To address concerns and strengthen the requirements of S1017BA (2)(b) two changes are needed:

- To ensure the disclosure required by (2)(b) is directly comparable to (2)(a) it should relate to the **10 year average net return** of the product rather than the number of years in the last ten that the target was met. This should be calculated on the same basis as (2)(a) so that it is net of investment and administrative costs and uses a standard account balance methodology proposed for (2)(a);
- All new products should disclose a 10 year proxy net return using an approved methodology by APRA using relevant historical benchmark returns for investment options and asset classes of the product or actual returns for a relevant predecessor product. Over time the actual returns would replace modelled historical returns on a rolling basis. This approach would actual returns for a new product to be included in the average as they become available.

#### **Recommendation:**

S 1017BA (2)(b) be amended to read:

- (b) The number of times the average net investment return which has been achieved for the product:
- i. In the last 10 financial years; or
  - ii. If the MySuper product has been offered for a period less than 10 financial years – each of the financial years in which the MySuper product has been offered with the balance of 10 financial years comprising returns of an approved predecessor product or proxy returns.

The Explanatory Memorandum should be amended to reflect the proposed changes and highlight that APRA will be responsible for approving the relevant methodology to be used by a fund for this dashboard requirement. In addition general guidance should be provided by APRA with input from ASIC.

Where a fund is transferring member accounts from an existing default investment option into a MySuper product it is entirely appropriate that the fund be in a position to apply to APRA to use its past net returns.

Looking into the future, unless there are exceptional circumstances, there should be a mandatory requirement that the dashboard of a MySuper product include the historical returns of a predecessor

MySuper product. Without such a requirement there will be a commercial incentive for poorly performing MySuper funds to phoenix and arise as a rebadged MySuper product unburdened by poor past performance.

### 2.1.3 Liquidity disclosure S 1017BA (2)(d) and (3)(d)

ISN is of the view that the liquidity measure proposed by APRA, (% of assets which can be liquidated in 30 days without a price impact), is wholly inappropriate and misleading and will not provide any useful information to consumers.

The current proposed measure is guaranteed to misrepresent the liquidity picture because it is based on only one of at least five factors which determine fund or option liquidity.

For example a liquidity rating of 70%, (based on an allocation to illiquid assets of 30%), implies only 70% of the member's holdings are liquid. However, if the fund or option's liquidity management is effective, 100% of a member's assets will be redeemable or switchable within one month under any conceivable circumstances. In addition, the proposed measure gives NO INDICATION of whether liquidity management is effective.

Not only does such a simplistic measure not account for many of the factors that affect liquidity it could mislead members about the accessibility of their investment and discourage fund trustees from investing in illiquid assets such as infrastructure.

As a general matter, we do not believe a liquidity measure is necessarily such a useful piece of information for consumers that it warrants the privileged position of dashboard placement, even if it could be constructed. A consumer's interest in liquidity is presumably related to their ability to transfer or withdraw their funds in a superannuation product on a timely basis. A consumer's rights in this respect are already disclosed, and portability and redemption requirements are established by law, unless a member agrees to a lock up. Elevating a liquidity measure to a position on the dashboard cannot be justified without resorting to arguments that strain credulity, such as that a reasonable consumer will evaluate the likelihood that a superannuation trustee will honour its statutory and contractual obligations in respect of portability or withdrawal based on the liquidity measure.

If a liquidity measure is considered important enough to place on the dashboard, then it should furnish useful and comparable information to consumers. This means that the liquidity measure should relate not to the assets within a [fund][product] but to the liquidity of the consumer's interest in the fund. We would suggest disclosure of the percentage of redemption and portability requests that the fund has honoured in a timely manner over a recent period, such as the past three years, or the average number of days that elapse between a portability or redemption request and the execution of that request. This is concrete, clear, measurable, and consumer-oriented.

A dashboard measure on the liquidity of underlying assets introduces a layer of substantial complexity between the experience and needs of a consumer (which relate to portability) and fund operations. There are a range of prudential and regulatory factors that require a RSE to consider fund asset liquidity issues. When meeting these prudential requirements RSE's are required to take into account a range of factors, these include the demographics of the fund, its cash flow and market expectations. It would be inappropriate, confusing and misleading to require the trustees of a fund to publish a liquidity measure on a product dashboard that does not take the same wide range of factors into consideration.

Moreover, the experience of a consumer in achieving portability or redemption or investment switching is not necessarily linked to the liquidity of an asset or even a fund's prudential liquidity. For example, a redemption or investment switch might be executed without the sale of fund assets. More importantly, poor administrative structure, staff, or technology might result in a consumer experiencing a slow redemption or other portability request even if the underlying fund assets and operation are deemed liquid.

Lastly, we note that a dashboard measure of the liquidity of the fund's assets could create pro-cyclical prudential risks.

**Solution:**

There are three approaches which would be significantly better than the current proposal by APRA:

- The disclosure could report the average number of days for member investment switches and redemptions to be actioned by the fund;
- The disclosure could report the number of instances in which We recognise it may be possible to craft a more sophisticated measure that could rank or rate the liquidity of a fund taking into account member profile, cash flow, hedging and asset allocation. This would be better than the current proposal, but not optimal because of the attenuation between asset liquidity and member interest liquidity arising from the quality of administration of the fund.

The first two approaches, while relatively simplistic, could be quite meaningful for members as they would provide a practical measure which could be updated regularly and that address what a member could experience.

The third measure, which is more prudential in nature, is more sophisticated but would be less readily understood by members.

#### 2.1.4 Liquidity rating

With liquidity, the concern is having enough liquid assets to meet foreseeable requirements. It is fundamentally a binary – you either do or you don't. In terms of the best interest test, there might be some maximum desired level, above which additional liquidity is detrimental, because liquid assets offer lower returns than less liquid assets. Ultimately, the requirement is for balance.

ISN suggests five determinative factors that consist of three on the demand (for liquidity) side and two on the supply (of liquidity) side. They are: the prevalence of different types of members, the net cash flow position, derivatives holdings, asset allocation, and relative position size.

##### **Member profile**

Liquidity requirements are determined in part by the propensity of members to withdraw from the fund or switch investment options.

Some factors that give a guide to these propensities are accumulation/retirement, age and default/choice membership.

A default accumulation option dominated by young members who are in the fund because it is a default workplace fund will have much lower propensity to remove funds or switch investment options than a retirement income product which people access only via an adviser.

Metrics in relation to the member profile might include:

- Proportion of members and proportion of assets that are Choice members.
- Proportion of members and assets that are in income products and/or approaching retirement.

Historical information about fund member behaviour should inform this measurement.

##### **Cash flow**

The sign, size, composition and variance of historical net flows give an indication of future net flows. Funds or options where contributions are dominated by compulsory workplace contributions will have a much more predictable source of cash going forward than funds or options where contributions are voluntary employer or member contributions. Funds that are shrinking due to industrial change, demographics or

policy change, (Defined Benefit to Defined Contribution), will have higher liquidity requirements; however, depending on the type of fund, these might be quite predictable.

Relevant metrics might include:

- Proportion of inflows that are (a) compulsory employer contributions, (b) voluntary employer contributions, (c) voluntary member contributions.
- Trend growth of contributions.
- Standard deviation of contributions.
- Historical record of full and partial lump sum withdrawals and investment option switching.

### **Hedging with derivatives**

Holding of derivatives, including for currency risk management, can lead to an abrupt requirement for liquid assets if they are subject to mark-to-market margining/cash collateral. A relevant metric is the proportion of assets covered by currency or interest rate hedges that have variation margin or other features that could give rise to tail risks creating unexpectedly high cash requirements.

### **Asset allocation**

Some assets can be converted to cash to meet liquidity requirements more readily than others

It is important to note – and it must be recognised by regulators and disclaimed on the dashboard – that, in times of stress, no significant market holding of any security, (except AAA short-term Government paper), can be converted to cash without adverse price effects.

### **Position size**

The ability to sell an asset without a price impact is only partially dependent upon the nature of the asset. The size of a position to be liquidated (particularly relative to average trading volume) also affects the likelihood of a price impact in connection with the sale. At some levels, the size of the position is more important than the nature of the asset. For example, the sale of a few shares of a small cap listed company is less likely to affect the price than a 5% stake in the shares of a large, well-known listed company. As a result, it ironically might be the case that a very large fund that had concentrated its asset allocation in large cap listed equity might be no more able to sell its position upon a liquidity event without a price impact than if it held a large stake in classically illiquid.

It is recognised that the fund may or may not need to liquidate its entire position, but that underscores the need for the liquidity measure to be sensitive to the demands for liquidity on the fund in the ordinary course and in terms of tail risk.

### **Constructing a single number from the measures**

Funds could be ranked on the five measures, and scored on that basis (e.g. 1<sup>st</sup>, 2<sup>nd</sup>...quintile). The final disclosed metric would be an amalgam of the five. The algorithm would need to achieve balance between the first three and last two, and the first three would probably have to be weighted subtly rather than a simple average.

But the principle is that a fund with Choice members, static or negative cash flows and significant hedging can tolerate less exposure to unlisted assets than a fund with default members, growing cash flows and limited hedging.

### **Recommendation:**

ISN would be happy for either of these approaches to be adopted but acknowledge that the average period to switch or make a redemption may be best aligned with member expectations about what liquidity means.

While not essential it would be desirable to amend S1017BA (2)(d) and (3)(d) to read:

(d) a measure about the liquidity of a member's investments in the MySuper product (or the investment option)

Most attention must be devoted to amending the Explanatory Memorandum. It must comprehensively outline the context of the liquidity disclosure in the dashboard and emphasise the factors which may affect the liquidity experience of members. Including; member profile, cash flow, hedging, asset allocation, and position size. Such context will be vital for assisting APRA and ASIC to interpret the legislative requirement and devise an appropriate liquidity measure.

In the alternative, it is suggested that in the absence of any generally accepted measure of liquidity that a preferable and less misleading approach would be to leave liquidity measures and considerations to APRA via the relevant prudential standards that require trustees and directors to consider and scenario test liquidity risks in the context of the fund demographic, current and expected cash flows and other relevant considerations. No dashboard measure is preferable to a misleading one.

## 2.2 Carve outs S 1017BA (4)

There continues to be a lack of clarity around the exclusion of platform investment options from the product dashboard requirements. The existing definition would likely result in members not benefiting from vital information in the dashboard. For example Real Estate Investment Trusts (REIT's) would appear to be excluded, even though such products were frozen during the GFC and many remain so. Fund of fund investment options should be included with only investments in listed securities excluded.

It is suggested that an unintended consequence of the existing wording of s1017BA (4) would be to exclude pre-packaged or established investment options from dashboard requirements. This should be addressed via the Explanatory Memorandum and ASIC guidance.

Similarly there is no reason why pension products should be excluded and given decisions to invest in pension products occur at the culmination of saving with large sums involved product dashboard information is vital.

### **Recommendation:**

1017BA (4)(b) should be deleted

1017BA (4)(c) should be amended to read:

- (c) The assets of the fund that are invested under the options are invested directly in listed securities.

1017BA (5) should be amended to include:

**Listed Securities**, has the same meaning as in the Superannuation Industry (Supervision) Act 1993

## 2.3 Fee cap on asset-based fees

ISN recognises that there is a maximum cost incurred by members for administrating their account. It is arguable that for those members with high account balances, percentage based fees can result in significant payments beyond the actual cost of administration of the account.

Provided the trustee meets their obligation to attribute costs fairly and reasonably between members of a fund, this issue is capable of resolution.

### **Recommendation:**

ISN believes this issue deserves further consideration and supports the insertion of a new 29VA (9) as proposed by AIST.

## 2.4 Anti-avoidance measures for transition to MySuper

Those members who are invested in a product with cash as a default investment option are exempted from transition to MySuper products. It is suggested that this exemption should not apply if the product design can result in a member being subsequently transferred to another investment strategy without written consent prior to the transfer.

**Recommendation:**

That in circumstances where a member's account is not transferred to a MySuper product by virtue of the default investment being cash, the member's investment option will remain in cash until such time as the member a) independently exercises choice of investment other than cash; or b) the member consents in writing to a proposal by the fund that the investment option be changed to a non-cash option.

