

**AUSTRALIAN PRUDENTIAL REGULATION AUTHORITY**

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18 March 2021

Mr Mark Fitt  
Committee Secretary  
Senate Economics Legislation Committee  
PO Box 6100  
Parliament House  
Canberra ACT 2600

Dear Secretary

APRA welcomes the opportunity to assist the Senate Economic Legislation Committee's Inquiry into the Treasury Laws Amendment (Your Future, Your Super) Bill 2021.

As the prudential regulator for superannuation, APRA supports the Government's proposed reforms. These reforms are a further step in the evolution of the regulatory framework as it continues to evolve in light of the increasing size and complexity of the superannuation industry.

This submission briefly outlines APRA's role in relation to the reforms, in the context of APRA's existing prudential framework and approach to improving member outcomes in superannuation.

Through the prudential framework, and targeted supervision and thematic work, APRA aims to ensure that member outcomes are at the forefront of decision making by trustees. The Government's Your Future, Your Super reforms complement and reinforce APRA's actions and approach in this regard.

The proposed Performance Test and YourSuper comparison tool build on recommendations from the Productivity Commission and leverage APRA's MySuper Product Heatmap, adding clear benchmarks with consequences should they not be met. This will sharpen and strengthen APRA's ability to enhance member outcomes across the superannuation system. Amending the best interest duty to be the best financial interest duty and increasing transparency of trustee expenditure also addresses recommendations from the Productivity Commission, and sharpens trustees' current obligations. These changes will leverage the enhanced reporting requirements that APRA has been working to implement. Further, to support the reforms, APRA will also strengthen the requirements of *Prudential Standard SPS 515 – Strategic Planning and Member Outcomes* (SPS 515).

The Government's proposed reforms seek to improve retirement savings for members via four main measures. The reforms work together with, and will strengthen, the current legislative and prudential frameworks that govern the complex superannuation system and the supervision activities of APRA and other peer regulators. No single measure or action by regulators will achieve the needed changes in the superannuation industry on its own, and effective collaboration by regulators in the implementation and ongoing monitoring of these reforms will be key.

APRA has been working, and will continue to work, closely with the Treasury, the Australian Taxation Office (ATO) and the Australian Securities and Investment Commission (ASIC) in relation to these important reforms and looks forward to assisting the Committee during its deliberations.

[REDACTED]  
Helen Rowell  
Deputy Chair

## **ANNEX A: Overview of APRA's role in the regulation of superannuation**

### **APRA's mandate and supervisory approach**

APRA is an independent statutory authority established for the purposes of prudential supervision of financial institutions and promoting financial system stability in Australia. APRA's mandate is to protect the Australian community by establishing and enforcing prudential standards and practices designed to ensure that, under all reasonable circumstances, financial promises made by the institutions it supervises are met within a stable, efficient and competitive financial system. As the prudential regulator of superannuation funds (other than self-managed funds), APRA seeks to ensure that the interests of superannuation fund members are protected.

In undertaking its mandate and enforcing the requirements of the *Superannuation Industry (Supervision) Act 1993* (SIS Act), the SIS Regulations and the prudential standards, APRA places a strong emphasis on active supervision to identify and require trustees to address issues, particularly where they threaten to negatively impact member outcomes.

APRA's supervisory approach is underpinned by three core attributes: risk-based, forward-looking and outcomes-focused. The risk-based approach directs supervisory focus to issues that are likely to present the greatest risk to the interests of superannuation members.

### **The Government's proposed reforms**

#### ***Holding funds to account for underperformance (Performance Test)***

Good performance cannot be guaranteed in advance, but acting to eradicate sustained poor performance is vital to boost retirement savings of superannuation members.

The Government's Performance Test leverages the work done by the Productivity Commission, and by APRA in developing the MySuper Product Heatmap. It establishes a clear benchmark for trustees to achieve and, importantly, introduces significant consequences for trustees with products that fail to meet this benchmark.

More than 10 million member accounts have already seen the benefits of transparent measurement of historical performance, fees and costs, with a number of funds merging or exiting the industry and over \$400 million saved in fees across these accounts since APRA's MySuper Product Heatmap was first published in December 2019.

The Performance Test will further accelerate the work APRA has done to ensure trustees improve member outcomes in underperforming MySuper products, and to address underperforming funds more broadly. Work is underway to incorporate the new Performance Test into APRA's existing approach for dealing with underperforming products and funds.

The Performance Test is proposed to apply for MySuper products from 1 July 2021 and be extended to apply to Trustee Directed Products from 1 July 2022. This staged approach for application of the Performance Test aligns with the timeframe for which the necessary data on choice products will be reported to APRA, and will assist industry and APRA to manage the work needed to implement the reforms. APRA is currently expanding and enhancing the data it collects from superannuation trustees through the multi-year Super Data Transformation project. Trustees will report this new data to APRA for the first time in September 2021, including data necessary to assess the performance of products beyond MySuper.

APRA is also currently developing its methodology for extending its Heatmaps – which provide additional information beyond the Performance Test metric – to choice products. APRA expects to release an Insights paper outlining its approach in the coming months, ahead of release of an initial choice heatmap for a sub-set of products later in 2021.

The legislation provides for regulations to be made to provide APRA with important flexibility in implementing the new Performance Test. This flexibility is necessary to allow, for example, the Performance Test to be adjusted for new products and changes in products over time, adjustments to be made in the event that unintended consequences of this measure arise and to ensure the Performance Test remains fit for purpose.

Included in this measure is an explicit prudential standard making power in relation to resolution (i.e. to assist, for example, with the orderly wind-up of an entity that is no longer viable). This aligns with other APRA-regulated industries and ensures that APRA has sufficient powers to require trustees to prepare recovery plans and support APRA resolution planning in relation to superannuation funds, the trustee itself and connected entities. This new measure is a necessary power to address concerns that members could languish in a closed product that has persistent underperformance.

### ***Increasing transparency and accountability (Best Financial Interests Duty)***

The changes introduced to the best interests duty reflect the importance of having members' financial interests at the forefront of decision making by trustees. The reversal of the evidentiary burden of proof (which is part of the BFID measure) will also further focus trustees' minds on the evidence they must have and the records they must keep to show they have acted in the best financial interests of members at all times.

This measure bolsters the requirements already introduced through SPS 515, building on penalty provisions recently introduced, which require trustees to ensure that their significant expenditure decisions are for the purposes of the sound and prudent management of its business operations and consistent with the best interests of beneficiaries.

Under SPS 515, trustees must be able to demonstrate:

- the purpose of the expenditure;
- how the expenditure is meeting its intended purpose;
- the circumstances that would trigger a review of the expenditure decision; and
- how the expenditure will be funded.

APRA will be collecting new data in 2021 that will provide greater detail of trustee expenditure and enable APRA to intensify supervisory activities to support this measure.

APRA is currently undertaking a broad review of trustee expenditure, looking at a range of different types of expenditure arrangements across all sectors of the superannuation industry. This review is considering the framework and decision-making process of boards pertaining to certain areas of expenditure, including a review of the metrics and approach to assessment of benefits to members.

If we conclude that fund expenditure by a particular trustee may not be consistent with the best interests of members or the sole purpose test, appropriate supervisory and/or enforcement action will follow. We are also seeking to identify both areas of good practice and areas where there is room for improvement, and expect to inform industry about our findings on an aggregate basis within the next year.

### ***Empower members (YourSuper comparison tool)***

As with the Performance Test, the YourSuper comparison tool leverages the APRA MySuper Product Heatmap data, and provides additional transparency to enable consumers to clearly identify funds that are underperforming.

APRA is working closely with the ATO and the Treasury to ensure timely and accurate data will be available from 1 July 2021.

APRA has deep expertise in collecting information from trustees and, through its long-standing data management processes, will identify data that fails to meet APRA's high data-quality expectations and can apply penalties to trustees where warranted. APRA has been working, and will continue to work, directly with trustees to ensure the data it collects, and which it will provide to the ATO, is fit for purpose. APRA is confident that it has the capability and capacity to provide the data underpinning the YourSuper comparison tool to the ATO in a timely and accurate way.

***Your superannuation follows you (stapling)***

APRA supports efforts to reduce unintended multiple accounts in superannuation. Through its supervisory work, APRA will focus on the operational implementation of this measure by trustees, including the potential implications for fund sustainability and adverse impacts on member outcomes.

APRA expects that the reduction in the aggregate number of member accounts across the system, and subsequent reduction in aggregate fees that should result, will act as an additional catalyst for further fund consolidation. This will especially be the case for those funds that do not otherwise have a growing membership base and are already facing sustainability challenges.