

Chapter 5

The proposed authorisation process of the Australian Prudential Regulatory Authority

5.1 The Superannuation Legislation Amendment (MySuper Core Provisions) Bill 2011 sets out the authority and the obligations of the Australian Prudential Regulatory Authority (APRA) in relation to deciding whether to authorise a registrable superannuation entity (RSE) to offer a MySuper product.

5.2 The overriding purpose of APRA's authorisation process is to ensure that a class of beneficial interest in a regulated superannuation fund is not offered as a MySuper product unless it offers a simple product that shares common characteristics.¹ As chapter 1 emphasised, this is the core objective of the MySuper reforms and has widespread stakeholder support.

5.3 Proposed section 29T of the Core Provisions Bill states that APRA must authorise an RSE to offer a class of beneficial interest in a regulated superannuation fund as a MySuper product. Proposed section 29T attaches several requirements that must be met for APRA to grant this authorisation. These are:

- compliance with proposed section 29S which outlines the minimum information required and other administrative requirements applicants must satisfy for their application to be considered by APRA;
- the applicant providing APRA with all the further information requested;
- that the fund is registered under Part 2B of the Superannuation Industry (Supervision) Act;
- that the fund has 5 or more members or that APRA is satisfied that the fund will have 5 or more members within a specified period;
- that the licensee is not already authorised to offer a MySuper product or, where it is, that further provisions are satisfied² in relation to either the class of beneficial interest in the fund to which the application relates or the class of beneficial interest that the RSE licensee is already authorised to offer as a MySuper product;
- that APRA is satisfied that proposed section 29TC (relating to the characteristics of a MySuper product) is satisfied in relation to that class of beneficial interest;

1 Superannuation Legislation Amendment (MySuperCore Provisions) Bill 2011, Section 29R, p. 5.

2 Namely, proposed section 29TA (product in another fund in which there is already material goodwill) or proposed section 29TB (MySuper products for large employers).

- that APRA is satisfied the RSE licensee—where it is a body corporate or a group of individual trustees—is likely to comply with the enhanced trustee obligations and fee rules for MySuper products³; and
- that APRA is satisfied the RSE licensee is not likely to offer a MySuper product when not authorised to do so or contravene the requirement that unless a member has elected for contributions to be paid into a specified choice product or more than one specified choice product, contributions will be paid into a MySuper product.⁴

Transitional arrangements and the authorisation timetable

5.4 Chapter 2 noted that the proposed amendments to the Superannuation Industry (Supervision) Act would commence on 1 January 2013, or on an earlier date fixed by Proclamation. This would allow APRA to receive applications for standard MySuper authorisations from RSE licensees from this date.

5.5 Potentially, APRA has up to 180 days from the date it receives the application to decide whether to authorise a MySuper product: 60 days to review, a further 60 days available to request further information and a further 60 days if required.

5.6 Part 2 of the Core Provisions Bill notes that if APRA authorises an RSE licensee before 1 July 2013 to offer a MySuper product, that authority takes effect on 1 July 2013. For applications made before 1 July 2013, therefore, APRA will potentially have 180 days from that date to make a decision on an authorisation.

5.7 The amendments to the Superannuation Guarantee (Administration) Act, which would require default payments to be made to MySuper products, would commence on 1 October 2013.

5.8 Proposed Section 29SB of the bill gives APRA 60 days after receipt within which to make a decision on an application. Proposed subsection 29SB (2) states that APRA may extend the period for deciding an application 'by up to 60 days' if APRA informs the RSE licensee of the extension in writing and within the period in which it would otherwise be required to decide the application.⁵

3 The trustee obligation requirements contained in s29VN of the Superannuation legislation Amendment (Trustee Obligation and Prudential Standards) Bill 2012. See chapter 2.

4 Superannuation Legislation Amendment (MySuperCore Provisions) Bill 2011, proposed section 29T.

5 Superannuation Legislation Amendment (MySuperCore Provisions) Bill 2011, proposed section 29SB.

Submitters' concerns with the proposed authorisation processes

5.9 Several submitters and witnesses expressed their concern with various aspects of the authorisation process as proposed in the bill. The following section examines these concerns, firstly in relation to the general process to obtain MySuper authorisation and secondly in the context of the authorisation process for tailored plans. It also notes APRA's views and responses to these issues.

The process to obtain a MySuper authorisation

5.10 In its submission to the inquiry, the Industry Super Network (ISN) argued that it is anticipated that most RSE's will seek early approval from APRA, applying soon after 1 January 2013 to accept contributions as at 1 July 2013. It noted that given the time lag between an application by an RSE and a determination by APRA:

...the sooner APRA provides pro-forma forms and guidance regarding the application process as outlined in section 29S, the more orderly the transition to MySuper will be. To avoid any confusion and uncertainty, information on the MySuper transition process should be made available as soon as is possible.⁶

5.11 The Australian Institute of Superannuation Trustees' (AIST) reached a similar conclusion. It reasoned that:

...the key date where a fund makes a MySuper application for a large employer MySuper prior to 1 July 2013 will be 27 December 2013. Within this time frame, funds will be able to accept default contributions into their existing default fund while their MySuper application is being decided. Effectively, this means funds (other than in relation to large employer MySuper products) will have to make an application for MySuper authorisation within the six month window between January and June 2013.

Funds are likely to want to apply as early as possible in this period and ideally prior to 1 April 2013, so that they can advise employers of their MySuper status, and ensure that they will be MySuper compliant if APRA require the full 180 days, as well as for other marketing purposes.⁷

5.12 The AIST told the committee that while the possible six month timeframe is 'satisfactory', there should be an 'absolute legislative requirement' on APRA to process all applications within that timeframe. Mr Haynes noted that the consequences of not getting MySuper authorisation for a fund are 'dire', given the fund would not be able to accept SG contributions after 1 October 2013, and would therefore not be able to operate.⁸

6 Industry Super Network, *Submission 7*, p. 1.

7 Australian Institute of Superannuation Trustees, *Submission 9*, p. 10.

8 Mr David Haynes, Project Director, Australian Institute of Superannuation Trustees, *Proof Committee Hansard*, 2 March 2012, pp. 49, 51.

5.13 The AIST recommended that given a fund's investigations and application process 'could reasonably take 3 months or more to complete', information about application requirements, forms and processes should be available from 1 July 2012.⁹ As Mr Haynes told the committee:

...we would strongly urge... parliament to expedite the carriage of all elements of the stronger super legislation through parliament so that there can be some greater clarity so that, in the second half of this year, funds are in a position to be able to do everything that is needed to get their application into APRA for their MySuper product from 1 January.¹⁰

5.14 The AIST also recommended that where APRA does not make a decision within the required period, it should be required to give reasons.¹¹

5.15 Mercer was unclear as to what APRA will request from trustees as part of the authorisation process:

At this stage it is unknown as to the level of detail that will be sought by APRA as part of the application process. For example, it is not known whether APRA will expect trustees to have developed appropriate policies based on the proposed prudential standards before submitting an application.¹²

APRA's views on the process to obtain MySuper authorisation

5.16 The committee did not receive a written submission from APRA. Its evidence to the committee is limited to that given by its officers at the public hearing on 2 March 2012. At the hearing, APRA told the committee that it would be seeking to make public its draft application authorisation forms and standards in May–June 2012, with a view to finalising these before the end of 2012. It noted that it has already started 'dialogue with trustees about the sorts of things we expect to see'.¹³

5.17 In response to comments from the ISN (above) relating to its expectation that most RSE's will seek early approval, APRA told the committee that:

[T]he biggest danger is that there might be some trustees who are laggards in the process, who come in quite late in the piece...In terms of the queuing process, we are not going to date, stamp and number each one when it

9 Australian Institute of Superannuation Trustees, *Submission 9*, p. 10.

10 Mr David Haynes, Project Director, Australian Institute of Superannuation Trustees, *Proof Committee Hansard*, 2 March 2012, p. 47.

11 Australian Institute of Superannuation Trustees, *Submission 9*, p. 11.

12 Mercer, *Submission 13*, p. 12.

13 Mr Keith Chapman, Executive General Manager, Diversified Institutions Division, Australian Prudential Regulation Authority, *Proof Committee Hansard*, 2 March 2012, p. 54.

comes in...But we have 260 front-line supervisors. Out of them probably 120 or 130 will have some involvement in this process.¹⁴

If we got 100 different applications on one day they would be likely to go to 50 different supervisors... [T]he queuing issue might be less of a problem than what people were suggesting...[W]e are encouraging draft applications in the second half of 2012. That is, again, to try and facilitate the process.¹⁵

5.18 APRA told the committee that the MySuper authorisation process represents the first time that the Authority has had to authorise a product rather than an organisation.¹⁶ It acknowledged that the focus on the features of a product, rather than a trustee's characteristics and behaviour, would require a change in mindset.

5.19 In this context, APRA anticipated that the task of processing applications for a MySuper product will have a heuristic element. It will examine the types of compliance issues and challenges that arise and plan with these in mind for future rounds. As APRA explained: '[G]etting those early ones [applications] in, or having collegiate discussions about the ones that do come in on 1 January and 1 February, is going to help'.¹⁷

5.20 In response to the comments from Mercer (above), APRA also noted that it is unlikely there will be demands for many different MySuper products from the same trustee.¹⁸ APRA told the committee that it not intending to 'batch' applications to allow particular competitors to have authorisation clearance at the same time.

5.21 APRA told the committee that it will be 'very pragmatic' in processing the second and third round of applications from the same trustees. It will examine the primary default MySuper product in the first instance and subsequent employer-sponsor applications in the context of the trustee's knowledge and experience with the default product. That said, APRA did recognise that some of the employer-sponsor MySuper applications could have 'quite strange' insurance arrangements making APRA's 'entry-control' important.¹⁹

14 Mr Keith Chapman, Executive General Manager, Diversified Institutions Division, Australian Prudential Regulation Authority, *Proof Committee Hansard*, 2 March 2012, p.55.

15 Dr Katrina Ellis, Senior Manager, Policy Development, Policy, Research and Statistics Division, Australian Prudential Regulation Authority, *Proof Committee Hansard*, 2 March 2012, p. 55.

16 Mr Keith Chapman, Executive General Manager, Diversified Institutions Division, Australian Prudential Regulation Authority, *Proof Committee Hansard*, 2 March 2012, p. 54.

17 Mr Keith Chapman, Executive General Manager, Diversified Institutions Division, Australian Prudential Regulation Authority, *Proof Committee Hansard*, 2 March 2012, p. 55.

18 Mr Keith Chapman, Executive General Manager, Diversified Institutions Division, Australian Prudential Regulation Authority, *Proof Committee Hansard*, 2 March 2012, p. 54.

19 Mr Keith Chapman, Executive General Manager, Diversified Institutions Division, Australian Prudential Regulation Authority, *Proof Committee Hansard*, 2 March 2012, p. 54.

The process to obtain a tailored large employer MySuper plan

5.22 Five organisations—BT, Mercer, the Corporate Superannuation Specialist Alliance (CSSA), the Association of Superannuation Funds of Australia (ASFA) and the Financial Services Council (FSC)—all argued that the authorisation process in the Core Provisions Bill for tailored MySuper products for large employers is unnecessary.

5.23 BT Financial Group argued that APRA should only be responsible for licensing the ability of the trustee to offer MySuper products, 'which would be a natural extension of its current role in licensing trustees'. BT viewed the prudential regulator's involvement in commercial arrangements entered into by superannuation funds with employers as 'costly, time consuming and inefficient for the industry'.²⁰

5.24 BT recommended amending the Core Provisions Bill so that APRA is only required to licence the ability of an RSE to offer MySuper products. Superannuation funds offering tailored MySuper products should only have an annual reporting obligation to APRA. This information could be used by APRA to ensure the tailoring of MySuper products is consistent with legislation.²¹

5.25 The CSSA told the committee:

Tailored MySuper funds should not require individual approval from APRA, as a blanket approval could be provided RSE licenses. This would reduce the time taken for approval and reduce administration, and therefore costs.²²

At the end of the day, the main difference between a tailored MySuper and the standard MySuper, to use a better term, is that the investment strategy can be chosen differently. There is no other difference between the two of them. If, as FSC requested, you go for a MySuper approval and you get it and do not have to come back with each tailored fund, it sort of takes away the need to have any number or any restriction around it, in my opinion. Investment strategy is the only difference, at the end of the day.²³

20 BT Financial Group, *Submission 11*, p. 2.

21 BT Financial Group, *Submission 11*, p. 3.

22 Mr Gareth Hall, Treasurer, Corporate Super Specialist Alliance, *Proof Committee Hansard*, 2 March 2012, p. 19.

23 Mr Douglas Latta, President, Corporate Super Specialist Alliance, *Proof Committee Hansard*, 2 March 2012, p. 20.

5.26 The Association of Superannuation Funds of Australia (ASFA) put a similar argument:

To compel the trustee to make a series of separate applications to APRA would prove an extremely inefficient process, consuming considerable resources and creating significant delays for little or no benefit. As a prudential regulator APRA has the power to assess large employer offerings as part of their regular reviews of funds.²⁴

5.27 Mercer also argued that it does not consider necessary the separate approval for tailored large employer MySuper plans. It saw as 'very strange' an arrangement where a trustee would have to apply for 50 tailored sub-plans where most of the content would be 'identical' for all of them.²⁵ Further, it argued that:

...in order to offer a tailored MySuper product, the trustee must already have convinced APRA that it is competent to operate a MySuper product. It therefore seems unnecessary that trustees have to obtain separate approval to operate a tailored MySuper, particularly where the proposed arrangement already has the requisite number of employee members to qualify. The requirements will add to inefficiency, make transition to MySuper more difficult and create further inefficiencies and time delays in relation to future fund mergers.²⁶

5.28 Mercer argued that the bill should be amended to remove the requirement for APRA approval of tailored MySuper products 'at least for cases where the 500 employee limit has been exceeded'.²⁷

5.29 The Financial Services Council (FSC) proposed an alternative authorisation process for tailored plans. It recommended that rather than APRA actively authorising each tailored plan proposal, trustees should simply have to report:

MySuper tailored plans must be reported to APRA on an annual basis – APRA can disallow a tailored plan where the tailored plan is not compliant with the licence conditions within 30 days. At which time, tailored plan closure arrangements commence.²⁸

5.30 The FSC explained that a system of reporting tailored plans will deliver transparency and competitive pressures, whereas the proposed system of applying for tailored plans will lead to duplication and inefficiency.²⁹

24 Association of Superannuation Funds of Australia, *Submission 12*, p. 5.

25 Mr Stephen Partridge, Product Leader, Outsourcing, Mercer, *Proof Committee Hansard*, 2 March 2012, p. 43.

26 Mercer, *Submission 13*, p. 25.

27 Mercer, *Submission 13*, p. 25.

28 Financial Services Council, *Submission 3*, p. 6.

29 Financial Services Council, *Submission 3*, p. 9.

AIST's view on tailored MySuper authorisations

5.31 In contrast to the arguments put by BT, ASFA, Mercer, the CSSA and the FSC, AIST told the committee that it is important for APRA to test the ability of the applicant to meet all of the MySuper criteria on each product that is offered. This up-front process will avoid unintended consequences where an applicant is retrospectively found not to have met the MySuper product requirements.³⁰ It added that this vetting process is particularly important when 'dealing with MySuper subsets... that will often be smaller and have different offerings even if they are within a similar template'.³¹

5.32 AIST did raise the logistical issue of 'queuing', with APRA having to process a backlog of applications. However, it told the committee: 'we are a pretty adaptive industry'³²—'[T]he industry responds well to a tight timetable.'³³ In terms of APRA, AIST commented:

...this is not the first time that they have dealt with major structural change. They did so in relation to RSE licensing a number of years ago. It is, I think, the case that this probably involves less procedural administrative work on the part of APRA than did the move to RSE licensing. I think this is probably more analogous to moves of funds to public offer status.³⁴

5.33 Notwithstanding its confidence in the industry and the regulator, AIST did comment that it would be interested in APRA's approach to processing the tailored MySuper plans. The President of AIST, Mr Gerard Noonan queried whether APRA would process the early application of a smaller fund with little more than 500 members before the later application of an AMP-type organisation with thousands of members.³⁵

30 Mr David Haynes, Project Director, Australian Institute of Superannuation Trustees, *Proof Committee Hansard*, 2 March 2012, pp 48, 51.

31 Mr David Haynes, Project Director, Australian Institute of Superannuation Trustees, *Proof Committee Hansard*, 2 March 2012, p. 48.

32 Mr Gerard Noonan, President, Australian Institute of Superannuation Trustees, *Proof Committee Hansard*, 2 March 2012, p. 48.

33 Mr David Haynes, Project Director, Australian Institute of Superannuation Trustees, *Proof Committee Hansard*, 2 March 2012, p. 48.

34 Mr David Haynes, Project Director, Australian Institute of Superannuation Trustees, *Proof Committee Hansard*, 2 March 2012, p. 49.

35 Mr Gerard Noonan, President, Australian Institute of Superannuation Trustees, *Proof Committee Hansard*, 2 March 2012, p. 49.

APRA's views on the authorisation process for tailored plans

5.34 The FSC proposal was put to APRA for its comment. It responded that the Authority is generally in favour of entry control as it allows for an evaluation and a 'pre-test' of issues. While APRA does have significant supervisory responsibilities, its 'definite preference is for an entry control'.³⁶ It recognised the work involved in this authorisation process would be considerable.

5.35 APRA did not accept that its responsibility to authorise an employer-sponsored tailored plan could lead to it 'second-guessing' a tender process. It told the committee that it could potentially disrupt a tender process. However, APRA emphasised that the types of issues that are likely to relate to an employer-sponsored tailored plan are idiosyncratic in nature: the main issues relating in the RSE licensee and the default MySuper product have already been cleared through separate processes.³⁷

Committee view

5.36 The committee notes that the successful implementation of the MySuper reforms hinges on APRA's ability to deliver within the set timeframes. APRA's record as a prudential regulator is very strong. It is consultative, highly skilled and responsive. It is important that APRA releases its draft authorisation forms, establishes the authorisation process and provides industry guidance on trustee obligations and prudential standards as quickly as possible. It is also important that APRA is well resourced by government to carry out its new responsibilities.

5.37 The committee believes that entry-point control through an authorisation process is an appropriate system through which to introduce both standard and tailored MySuper products. It agrees with the AIST that an authorisation process is far preferable to a situation where, under a reporting system, a MySuper product that is already in use is subsequently cancelled by APRA. Nonetheless, the committee believes that as APRA becomes more proficient with processing MySuper products, and as both APRA and the industry become more aware of the types of products that will not gain authorisation, there may be a case to shift from an authorisation to a notification scheme.

36 Mr Keith Chapman, Executive General Manager, Diversified Institutions Division, Australian Prudential Regulation Authority, *Proof Committee Hansard*, 2 March 2012, pp 53–54.

37 Mr Keith Chapman, Executive General Manager, Diversified Institutions Division, Australian Prudential Regulation Authority, *Proof Committee Hansard*, 2 March 2012, p. 58.

Concluding comments

5.38 This report has canvassed the various concerns of submitters with the detail of two complex Bills. While the committee's timeframe to examine the provisions of these Bills has—by necessity—been truncated, the inquiry has raised a number of issues for the Government and the Parliament to give careful consideration. The committee particularly draws attention to the recommendations in chapter 3 of this report.

5.39 That said, the committee believes that this inquiry's focus on the detail and potential weaknesses of the legislation does tend to distract from the overriding support for the MySuper reforms. The committee believes that the Bills meet the government's overarching objectives of providing simplicity, transparency and comparability of MySuper products. As Mercer told the committee: 'overall, the whole approach is a step forward for better protection for those members who do not make their own choices'.³⁸

Recommendation 3

5.40 The committee recommends that the Superannuation Legislation Amendment (MySuper Core Provisions) Bill 2011 and the Superannuation Legislation Amendment (Trustee Obligations and Prudential Standards) Bill 2012 be passed.

Chair

Ms Deborah O'Neill MP

38 Mr Stephen Partridge, *Proof Committee Hansard*, 2 March 2012, p. 42.