

13 May 2016

Responsible Investment Association Australia ('RIAA')
Attn: Simon O'Connor, CEO
Level 9, 387 George Street
Sydney
NSW 2000

BY EMAIL: Simon O'Connor <simonoc@responsibleinvestment.org>

Dear Simon

RE: POLICY BRIEFING: FIDUCIARY DUTY AS CONSISTENT WITH CONSIDERATION OF ENVIRONMENT, SOCIAL AND CORPORATE GOVERNANCE ('ESG') CONSIDERATIONS

The Financial Services Council welcomes the opportunity to provide comments to the RIAA in regards to the move to develop a joint industry body position clarifying fiduciary duties around ESG issues (in particular, in relation to superannuation trustees).

The Financial Services Council ('FSC') represents Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks, trustee companies and public trustees. The FSC has over 125 members who are responsible for investing more than \$2.5 trillion on behalf of 11 million Australians. The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange and is the third largest pool of managed funds in the world.

In Appendix A we outline our comments in relation to the RIAA Policy Briefing in detail, specifically in relation to the fiduciary duties of superannuation fund trustees.

Please contact me with any questions in relation to this submission on (02) 9299 3022.

Yours sincerely,



JENNA MOLLROSS
Policy Manager

APPENDIX A

POLICY BRIEFING: FIDUCIARY DUTY AS CONSISTENT WITH CONSIDERATION OF ENVIRONMENT, SOCIAL AND CORPORATE GOVERNANCE ('ESG') CONSIDERATIONS

GENERAL COMMENTS

Our members' general view is that it is not easy to assess the extent of any issues in clarifying the fiduciary duty of a superannuation fund trustee in regards to ESG considerations. This is a result of confusion among trustees about whether consideration of ESG issues falls under their fiduciary duty. Presently, this is uncertain.

However it is recognised that, assuming there is widespread confusion, it may cause some trustees to ignore ESG issues (and thereby possible risk exposure), potentially causing long-term financial harm to beneficiaries.

If it is the case that the general level of confusion is merely leading to avoidance, then FSC does not see much downside in regulators clarifying that some long-term investment risks fall under the ESG banner, thereby obligating trustees to consider these risks as part of their fiduciary duty.

Therefore, at this stage we could potentially support, subject to assessing the detail, the following proposals in the RIAA Policy Briefing:

- Australian regulators providing greater clarity for trustees that they are permitted to make 'ethical' investment decisions (decisions to align funds with members' interests) and 'social impact' investments provided they align with members' wishes, are consistent with fund objectives, and comply with SIS Act requirements.
- Consideration of ESG factors as part of investment research, analysis, selection and monitoring.

However, the RIAA Policy Briefing goes much further than this, suggesting that:

- Confusion and uncertainty can be rectified by clarifying statements by APRA and updates to SPG530 in the manner of the recent US ERISA Guidance and UK Law Commission
- That clear tests be put in place to guide when and how trustees can consider both ethical and social impact investments.

These issues are far more complex and for this reason, ethical and SRI issues are commonly separated from assessments of ESG issues as investment risks (as discussed above).

SPECIFIC COMMENTS

The FSC member group has specific comments in relation to the following points contained in the RIAA Policy Briefing:

- a. Trustees aligning their investments with their members values (via 'ethical' exclusions)
- b. Promoting social outcomes as an additional investment objective via social impact investments.

Trustees aligning their investments with their members values (via 'ethical' exclusions)

As to the above point, the view is that there is certainly some local precedent for this already, and developments in the US/UK as noted in the RIAA Policy Briefing. However there remains a difficult potential conflict for trustees – does a trustee sacrifice returns for ethics? Further, in practice, finding common ground on ethics across thousands of members is almost impossible. Trustees that make the above sacrifice may risk legal action from members (hence the cited need for more regulatory protection). Based on the limited information provided to date, the FSC would be unlikely to support this (unless the above issues are dealt with) until more detail was provided as to the governing framework that would drive the alignment of investment strategy with ethics.

Promoting social outcomes as an additional investment objective via social impact investments

Two key questions need to be asked here:

- Do members indeed want trustees investing their money for social outcomes?
- Do members want trustees promoting social outcome-based investments at the expense of more profitable investments?

This also strikes at the heart of the sole purpose doctrine, therefore any tinkering here by regulators would need very careful consideration in order to avoid member disasters. So again, as with the above comments, we would need to see much more detail before the FSC could consider supporting this.