

11 September 2017

AUSTRALIAN PRUDENTIAL REGULATION AUTHORITY  
GPO Box 9836,  
Sydney, NSW 2001

**By email:**

[superannuation.policy@apra.gov.au](mailto:superannuation.policy@apra.gov.au)

Dear Colleagues

**STRENGTHENING OPERATIONAL GOVERNANCE OF RSE LICENSEES**

The Financial Services Council (**FSC**) has over 100 members representing Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks and licensed trustee companies. The industry is responsible for investing more than \$2.7 trillion on behalf of 13 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 fourth largest pool of managed funds in the world. The FSC promotes best practice for the financial services industry by setting mandatory Standards for its members and providing Guidance Notes to assist in operational efficiency.

Thank you for the opportunity to provide a submission on this topic with specific reference to your letter of 11 August 2017 to all RSE licensees (**letter**).

Our comments are set out below. For convenience, we will adopt the headings in the letter.

***Operational governance, strategic and business planning and member outcomes***

*Fund expenditure and reserving*

1. We acknowledge the sentiments expressed in this context. However, it is important to keep in mind that as a matter of general law, if consistent with the trust deed and incurred for a proper purpose, expenditure is treated as properly incurred. We anticipate that any standard or guidance (guidance) will acknowledge these principles.

2. Putting to one side any elements of speculative, imprudent or improper expenditure, we believe the guidance should acknowledge that not all expenditure will ultimately achieve its purpose or intended outcome. For

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example, a trustee may feel it in the interests of members to expend trust moneys on products and programs intended to benefit members which in the normal course would be considered 'innovative'. The expenditure is authorised by the trust deed and is consistent with general law and SIS covenants. In these circumstances, it seems to us that the expenditure although it has not achieved its stated outcome is still appropriate and proper. Of course, members effectively bear the risk for innovation initiatives. Accordingly, each circumstances should be tested by reference to its own particular facts and be supported by strong supporting governance frameworks.

3. In formulating the guidance, it seems to us that APRA should recognise that there exist within the Australian superannuation industry at least two distinct models. The first model is that of the retail public offer model and the second includes corporate and industry funds. Putting to one side one-off cost recovery exercises (such as recovery for Stronger Super reforms), in the retail trustee environment there is effectively no discretionary expenditure or exposure to innovative failure. Accordingly 'attribution of profit' is redundant and simply is a financial accounting outcome. Invariably, all costs for retail funds are fixed and disclosed in a PDS. Retail funds also tend not to rely on smoothing reserves.

### *MySuper outcomes assessment*

4. In our view, the relevant My Super outcomes assessment should involve a process of benchmarking only against similar funds. We also believe that adequate transition timeframes of, say, at least 12 months are required prior to implementation.

### *Assessing outcomes for all beneficiaries*

5. We have raised many times the difficulties with legacy products and the impediments to consolidation and rationalisation of such products. Guidance should acknowledge that there are regulatory barriers to the rationalisation of such products. Clearly, over time member outcomes may diminish in the absence of a clear legislative roadmap for consolidation. Whilst SPG 227 has been helpful to understand the regulator's perspective, it does not solve for legal hurdles and legacy product issues that are not caught under the SIS Act.

6. We also emphasise that the appropriateness of comparisons should be carefully considered and evaluated in the guidance.

7. We also note that the resetting of default insurance arrangements may result in some members potentially losing benefits without their knowledge. This needs to be considered in the guidance in relation to erosion of benefits. Further improvements could also be made within this area with reference to the underlying terms and conditions of insurance offered to members.

8. We note in the letter and at the recent round table it was indicated that guidance would be 'principles based'. We strongly support this approach given the many variables involved. In other words, in our view it would be preferable if guidance in fact could be principles based, rather than containing a series of prescriptive rules.

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We look forward to consulting further with APRA in due course as to the guidance.

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Should you have any questions, please contact the writer on 02-9299 3022.

**Yours Faithfully**

A handwritten signature in blue ink that reads "Paul Callaghan." The signature is written in a cursive style with a period at the end.

**Paul Callaghan**

**General Counsel**