

22 May 2026

Neena Pai  
First Assistant Secretary  
Retirement Income and Superannuation Division  
The Treasury  
Via online submission portal.

Dear Ms Pai,

The Financial Services Council (FSC) welcomes the opportunity to respond to Treasury's discussion paper on superannuation switching and platform governance. This letter provides a summary of the FSC's key positions and recommendations, with further detail set out in the attached submission.

### **About the Financial Services Council**

The FSC is a peak body which sets mandatory Standards and develops policy for more than 130 member companies in one of Australia's largest industry sectors, financial services. Our Full Members represent Australia's retail and wholesale funds management businesses, superannuation funds, and financial advice licensees. Our Supporting Members represent the professional services firms such as ICT, consulting, accounting, legal, recruitment, actuarial and research houses.

The financial services industry is responsible for investing more than \$4 trillion on behalf of over 16.9 million Australians. The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange and is one of the largest pools of managed funds in the world.

### **Consultation Response and Consideration of Policy Trade-Offs**

The FSC supports the Government's objective of strengthening consumer protections and addressing the misconduct and consumer harm identified in the Shield and First Guardian matters. However, the FSC considers it critical that any policy response is targeted at the underlying causes of those failures and does not introduce broad, system-wide restrictions that constrain legitimate consumer choice of fund, reduce access to financial advice, or distort competition across the superannuation system.

A central concern in the consultation paper is the implied characterisation of superannuation platforms and platform products as inherently higher risk. The FSC does not agree with this premise. Platforms are an access mechanism through which members can invest across a broad range of products and strategies. Risk is determined by the characteristics of the underlying investments (not just investment risk but also governance risk), and not by the platform structure itself. Importantly all APRA-regulated trustees are already subject to the same legislative and prudential framework, including duties to act in members' best financial

interests, maintain robust investment governance, governance over financial advice relationships, and to manage conflicts. It is important to recognise the complex and multifaceted nature of risk, distinguishing between investment risk, which is a legitimate and necessary feature of investment choice, and governance or conduct risk, which relates to product oversight, due diligence failures, misconduct or fraud. That is, an investment product that may bear a higher investment risk profile may be well governed by a competent Responsible Entity, whereas an investment product that purports to have lower risk investment features may be badly governed by a Responsible Entity with conflicted arrangements and inadequate experience. The recent failures that prompted this consultation arose primarily from governance and conduct failures, not from the existence of platforms or member choice.

The FSC also emphasises that choice is a fundamental feature of Australia's superannuation system. Superannuation represents deferred wages, and individuals should retain the ability to determine how their retirement savings are invested. Choice supports competition, innovation and product differentiation, particularly for members with more complex financial circumstances who require tailored investment solutions and regulated financial advice.

Consistent with these principles, the FSC does not support the introduction of a separate regulatory regime for platform trustees or platform products. Creating a separate regime for platforms will duplicate and add a complex layer on top of existing trustee and financial advice obligations, and create competitive distortions, without addressing the root causes of consumer harm.

In thinking about the Treasury consultation package as a whole, involving considerations around Managed Investment Scheme oversight and governance, curbing lead generation activity, enhancing member protections in the superannuation system, and reforming the Compensation Scheme of Last Resort, the FSC considers that a targeted but effective package of reform includes the following elements:

- **Prohibit conflicted and harmful lead generation practices** without prohibiting legitimate advertising practices, professional financial advice conversations, and referral practices between superannuation funds/financial institutions and financial advisers.
- **Enhance ASIC's ability to undertake risk-based oversight of managed investment schemes** based on the resourcing and competence of the Responsible Entity to manage certain higher risk or illiquid schemes. ASIC's enhanced oversight should include at the stage of granting an AFSL and scheme registration stage, and on an ongoing basis based on better access to data from MISs and platforms. *This can be done with minimal to no law reform, enhancing ASIC's capability to enforce existing law.*
- **Recognise superannuation platform industry self-regulation** within the context of existing investment governance obligations, removing the need for greater prescription in the law around investment menu governance and ongoing trustee monitoring of statements of advice. *Existing ASIC regulatory action resulting in wider industry uplift, and industry attestation to clear FSC governance standards reduces the need for additional law reform creating a new layer of prescription and duplication in the law.*

- **Enhance the need for superannuation trustees to stand behind their investment governance processes with capital available for compensation**, reducing the risk of catastrophic financial loss for superannuation consumers.
- **Structural reform of the Compensation Scheme of Last Resort** to bring year on year cost below the financial advice sub-sector cap. Certainty around ongoing special levies and a clear cut-off point, minimising the cost to the wider financial services sector through cost spreading.

The FSC submits that a targeted package that includes the above elements would achieve several strong layers of consumer protection defence, materially reducing the risk of detrimental loss to the consumer without the need for additional prescription in the law around platform governance, restrictions on investment products, restrictions on consumer choice and limits to financial advice access:

- **Layer 1:** Reduce the risk of badly governed and inappropriate products coming to market in the first place through enhanced ASIC data collection powers and therefore enhanced capability to undertake supervision through identifying risks with REs and MISs early on, leading to either the rejection of RE licenses, scheme registrations, or targeted ongoing monitoring where certain risk factors are identified.
- **Layer 2:** If badly governed and inappropriate products fall through the net, reduce the risk of mis-selling through the prohibition of harmful lead generation practices, the regulation of financial services advertising, and the ability of ASIC to undertake ongoing monitoring of mis-selling and inappropriate distribution through data gathered from superannuation platforms and MISs on a recurrent and event-triggered basis.
- **Layer 3:** If inappropriate distribution is occurring in the market undetected, superannuation platforms can act as an important gatekeeper under their existing investment governance and adviser relationship governance obligations. The FSC expects there will be a higher baseline across the industry due to work on the FSC investment governance and adviser governance standard, and ongoing regulatory action to enforce investment governance obligations. In the event that a badly governed and inappropriate product gets through the platform gatekeeper, upon detecting concerning trends, the platform should be clearly empowered to report these concerning trends to the regulator as well as share intelligence with other industry participants in existing scams and fraud forums. Under existing investment governance obligations the platform would stop flows to an option.
- **Layer 4:** If the superannuation platform had material deficiencies in its investment governance processes, they should act as a final backstop to prevent detrimental losses for superannuation consumers through the provision of compensation where these losses arose due to the investment governance deficiencies. Where losses do not involve superannuation platforms and involve failures of financial advice duties, a reformed and sustainable Compensation Scheme of Last would continue to be a final backstop.

Given the multiple layers of defence outlined above which apply the key elements of what the FSC submits is a targeted and effective package, any additional consumer benefit from the other policy proposals raised in this consultation paper would be marginal to none. They

would risk adding regulatory cost, dampening market competition, restricting access to financial advice for minimal additional benefit in terms of reducing risk in the system.

Specifically, the FSC's position on the four proposals raised in this consultation paper is as follows:

**Proposal 1: Strengthening governance requirements for platform trustees**

The FSC does not support the introduction of a separate regulatory framework for platform trustees, including separate definitions, codified due diligence requirements, or platform-specific restrictions on conflicted arrangements. Existing trustee obligations under the SIS Act and APRA prudential standards, together with existing financial advice obligations, already provide a strong framework, and the FSC notes the current action by the regulator under the existing framework. Where improvements are needed, these should be delivered through enhanced industry standards (noting the FSC's recently released platform investment governance and adviser governance standard (Standard 31)) and stronger regulatory supervision, rather than new legislative layers. On external trustees, the FSC supports consistent governance accountability regardless of trustee model, and recommends Treasury consider targeted accountability enhancements, including expanding the Financial Accountability Regime, to better align accountability where platform operations are separate from the trustee.

**Proposal 2: Increased SIS Act penalties**

The FSC supports increasing SIS Act penalties to better align with the Corporations Act, provided this is done consistently and proportionately. Greater alignment would support stronger deterrence and more effective enforcement, without imposing additional burden on compliant trustees.

**Proposal 3: Introducing a waiting period for superannuation switching**

The FSC does not support the introduction of mandatory waiting periods, reconfirmation requirements, or restrictions on adviser-client communications. These measures would introduce significant friction, cost and operational complexity, while doing little to address the harms identified in recent cases. The FSC considers that waiting periods are the wrong policy tool for addressing fraud or inappropriate switching. That said, there are measures Treasury should prioritise to improve a fund's ability to manage potential fraud including targeted legislative reform to strengthen SuperStream authentication controls, including positive consent mechanisms and clearer trustee discretion to undertake additional verification where appropriate.

**Proposal 4: Limiting fee deductions for switching-related advice**

The FSC does not support prohibiting advice fee deductions for switching-related advice. We emphasise that professional financial advice that involves considering whether an individual's superannuation fund is right for their financial situation, objectives and needs is a legitimate and important consideration when providing holistic financial advice and must be done in the best interests of the member. Such measures would materially reduce access to professional financial advice. FSC data from six of the largest superannuation platforms shows that almost one million Australians currently access advice by paying through their superannuation. The FSC supports principles-based governance requirements for trustees overseeing advice fee deductions, consistent with existing obligations under section 99FA of the SIS Act and FSC Standard 31, and considers these settings provide a more proportionate and effective response than additional prescriptive laws.

**Proposal 5: Requiring platform trustees to compensate members for eligible losses**

The FSC supports trustees being required to stand behind their investment governance processes by compensating members where there have been material deficiencies in the investment governance process resulting in consumer loss. If the Government is minded to legislate a new compensation framework for trustees, it should be consistent across the superannuation system, linked to demonstrable failures in investment governance and must not operate as a de facto guarantee against all investment losses. Any new compensation framework must also carefully consider interaction with existing redress mechanisms, including AFCA, CSLR, insurance and other avenues of remediation.

The FSC considers that the existing regulatory architecture for superannuation, managed investments and financial advice is comprehensive and robust, with the sector already subject to extensive obligations. We consider that the risk of analogous consumer harm to the Shield and First Guardian scenario is not primarily due to the absence of regulation. However, the FSC supports targeted reforms that can better ensure effective supervision, enforcement and that address genuine risks without undermining legitimate consumer choice, access to advice and adding unnecessary regulatory burden.

We would welcome the opportunity to engage further with Treasury as these reforms are considered. Please contact Kirsten Samuels, Policy Director, Superannuation on 0435 779 858 or email [ksamuels@fsc.org.au](mailto:ksamuels@fsc.org.au).

Yours sincerely,

Chaneg Torres  
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## 1. Summary of Recommendations

Proposal	Recommendation	Policy Trade off
<b>Proposal 1: Definition of Platforms</b>	Avoid creating a separate regulatory category or supplementary regime for platform superannuation products. Instead, any measures targeting platform-related risks should apply consistently across all superannuation products that offer broad member-directed investment choice.	<p><b>REJECT</b></p> <p>Duplicates existing law and regulatory action for minimal consumer benefit.</p>
<b>Proposal 1: Holding Limits</b>	Treasury should not introduce mandatory holding limits for platform investment options, as existing trustee obligations and industry standards already provide a principles-based framework for managing concentration and diversification risks. If limits are adopted, they should apply consistently across all superannuation products on a look-through basis to ensure competitive neutrality and equivalent treatment of risk.	
<b>Proposal 1: Codified Due Diligence Requirements</b>	Treasury should not introduce codified due diligence obligations, including for platform trustees. Instead, it should rely on the existing legislative and prudential framework, supported by SPS 530, industry guidance, and enhanced APRA guidance on due diligence expectations for onboarding investment options.	
<b>Proposal 1: Limiting conflicted arrangements</b>	Treasury should not introduce platform-specific restrictions on conflicted remuneration and should continue relying on the existing legislative and prudential framework. Any reforms should preserve legitimate, appropriately disclosed and governed commercial arrangements while addressing identified risks.	
	Treasury should bring prescribed lead generation activities within the financial services regulatory framework to ensure conflicted remuneration rules apply consistently and cannot be circumvented through indirect or third-party arrangements.	

<p><b>Proposal 1: Restricting certain operating models</b></p>	<p>Treasury should maintain a model agnostic approach to trustee governance, assessing risks based on functional governance characteristics rather than legal structure. Any identified gaps should be addressed through proportionate measures, including potential FAR accountability enhancements and strengthened oversight arrangements, rather than structural restrictions on particular trustee models.</p>	
<p><b>Proposal 2: Increasing penalties</b></p>	<p>Treasury should strengthen enforcement by aligning SIS Act penalties with the Corporations Act.</p>	<p><b>SUPPORT</b></p>
<p><b>Proposal 3: Waiting periods</b></p>	<p>Treasury should not introduce superannuation switching waiting periods or reconfirmation requirements, as they would not address the causes of consumer harm, would duplicate existing protections, and would create unnecessary friction, complexity, cost, and risk across the superannuation system.</p> <p>Treasury should not introduce mandatory waiting periods or communication restrictions for superannuation switching advice, as existing safeguards are sufficient and additional delays would impede access to regulated advice and informed consumer decision making without addressing the underlying causes of harm. If a waiting period is introduced, communications should be limited to factual information, retention-focused activity should be prohibited, members should be able to opt out where they have made an informed decision, and implementation should account for the significant administrative challenges posed by existing SuperStream and ATO architecture.</p> <p>Treasury should avoid prescriptive classifications of “higher-risk products” and instead adopt a principles-based approach that recognises member choice, distinguishes investment risk from governance risk, and aligns with existing trustee obligations.</p>	<p><b>REJECT</b></p> <p>Unnecessarily constrains legitimate consumer choice, disproportionate additional red tape, administratively difficult and costly for little consumer benefit.</p>

<p><b>Proposal 3: Visibility of fund flows</b></p>	<p>Treasury should support proportionate intelligence sharing and risk-based supervision by enhancing regulator data and supervisory capabilities, while avoiding prescriptive definitions of “higher risk” products, unnecessary reporting duplication, or restrictions on retail access to investment products.</p>	<p><b>SUPPORT</b></p> <p>Enhances regulatory framework/consumer risk in targeted way.</p>
<p><b>Proposal 4: Limiting fee deductions</b></p>	<p>Treasury should not restrict advice fee deductions from superannuation, as doing so would reduce access to professional financial advice, undermine member choice, and fail to address the causes of recent misconduct. If restrictions are introduced, they should apply consistently across all funds and avoid arbitrary age or balance-based thresholds.</p>	<p><b>REJECT</b></p> <p>Duplicates existing law, reduces access to financial advice, reduces consumer choice, reduces market competition, disproportionate additional red tape.</p>
<p>Treasury should not legislate requirements already addressed through industry standards where existing frameworks, including FSC Standard 31, deliver substantially equivalent outcomes.</p>		
<p>Treasury should continue to rely on the existing principles-based trustee obligations and monitoring framework for advice fee deductions, which provide appropriate oversight and flexibility while protecting members.</p>		
<p><b>Proposal 5: Funding member compensation</b></p>	<p>Treasury should prioritise reforms that address the upstream drivers of consumer harm, including stronger oversight of lead generation practices, managed investment schemes, and improved coordination and accessibility of existing consumer redress mechanisms.</p>	<p><b>SUPPORT (Subject to proposed FSC modifications)</b></p> <p>Enhances regulatory framework/consumer risk in targeted way</p>
<p>If a trustee compensation mechanism is introduced, it should operate as a targeted, last resort backstop that is sector neutral, post funded, limited to eligible losses arising from trustee governance failures, and proportionate to the trustee’s contribution to the loss.</p>		

	<p>ASIC should be responsible for determining eligible loss events and directing remediation where appropriate, subject to clear evidentiary standards and rights of independent review and appeal.</p>	
	<p>Any financial resource requirements associated with a compensation mechanism should be principles based, requiring trustees to maintain access to sufficient capital without imposing prescriptive capital requirements.</p>	
	<p>Any trustee compensation framework should operate in a coordinated manner with the CSLR, avoiding double recovery and recognising trustee funded remediation through levy offsets or equivalent adjustments.</p>	

## 2. Guiding Principles

When considering the response to the Discussion Paper, the FSC has considered several high-level principles:

### **1. Platforms and platform products are not inherently high-risk.**

Platforms offer a wide range of investment options across the full spectrum of risk appetites. Risk should be clearly distinguished between investment risk and governance risk in this context. Investment risk is determined by the characteristics of the underlying assets, while governance risk relates to matters such as product oversight, due diligence and conflicts management. Existing disclosure obligations support informed decision making. Characterising platforms as inherently higher risk is misleading and risks poorer consumer outcomes if reflected in regulation.

### **2. Policy responses must address the causes of recent failures.**

The collapse of Shield and First Guardian arose from specific circumstances. Any response should be targeted to those causes and harms, rather than applying broad measures that may constrain legitimate consumer choice.

### **3. Choice is a fundamental feature of the superannuation system.**

Superannuation represents deferred wages, and individuals should retain the ability to determine how their savings are invested. Limiting choice would reduce competition and weaken incentives for funds to innovate and deliver high quality services.

### **4. Platforms operate within an established and consistent regulatory framework.**

All APRA regulated superannuation products, which includes superannuation platforms are subject to the same legislative and prudential requirements. Applying a separate or more restrictive regime would create inconsistency and disadvantage consumers seeking flexibility.

### **5. High risk switching should be defined by conduct, not product type.**

High risk switching should not be defined by a switch into a platform or into a higher risk product. Switching into a platform or a higher risk investment is not inherently inappropriate. A high-risk switch is more accurately characterised by inadequate information, poor governance, poor distribution practice, or misconduct. Broadly classifying platform switching as high risk misrepresents the nature of these products.

### **6. Financial literacy is critical to improving consumer outcomes.**

Strengthening financial literacy would better equip individuals to assess advice, identify inappropriate conduct, and make decisions aligned with their long-term interests.

### **7. Financial advice is a critical and well-regulated part of the system.**

Financial advice is subject to best interests' obligations and plays an essential role in guiding consumers through complex decisions, including switching superannuation funds where appropriate. Isolated misconduct should not diminish the role of the profession.

**8. The existing regulatory framework should be effectively enforced.**

Superannuation funds, managed investment schemes, and financial advisers are already subject to extensive regulation. Effective enforcement and supervision are essential. Increasing regulatory burden is unlikely to improve outcomes. The focus should be on enhancing regulator ability to undertake supervision and enforcement under existing law.

**9. Regulatory responses should align with broader efforts to reduce unnecessary burden.**

The Government has previously announced its intention to cut red-tape and streamline processes. In a system already subject to significant legislative and prudential requirements, additional measures should be carefully calibrated to avoid inefficiencies and unintended consequences.

### 3. Choice in Superannuation

Choice is a fundamental feature of Australia's superannuation system and reflects the evolution of the system from one centred on employer-selected default arrangements to one that supports both default and active choice, recognising that different customers have different levels of engagement and different retirement needs.

The foundations of the system were grounded in the principle that superannuation represents the deferred wages of workers and exists for the benefit of the individual.<sup>1</sup> While early arrangements relied heavily on employer-selected default funds, superannuation was ultimately built on the notion that although deferred, superannuation forms part of employees' overall remuneration and therefore, allowing people to make choices about where these wages are invested is key.

As balances increased and financial circumstances became more complex, it became clear that a single default model could not meet the diverse needs of all Australians. The introduction of choice of fund in 2005 reflected this progression, with reforms designed to provide individuals with greater control over their superannuation and to promote competition between funds in relation to performance, fees, and service.<sup>2</sup> This embedded the principle that customers should be able to make decisions about their retirement savings that reflect their individual circumstances and preferences.

This policy intent remains highly relevant today. As the system has matured, customers have become more engaged and are increasingly making active decisions about their superannuation and retirement income. Switching between superannuation funds is a normal and expected feature of a competitive system, with more than \$143 billion rolled over between APRA regulated funds in the year to June 2025. Customers move for a range of legitimate reasons, including consolidating accounts, acting on financial advice, accessing different investment options, and seeking products and services that better align with their needs.

Importantly, customers who exercise choice are not typically disengaged or vulnerable. Evidence from FSC members indicates that those switching into platform-based products are generally older, have higher balances when compared to others within a particular age cohort, and are supported by financial advice. These customers are making active and considered decisions about their retirement savings, often as part of a broader financial strategy.

The superannuation system has evolved to support different levels of engagement and complexity. While default products continue to play an important role, choice products now represent a significant portion of the system, reflecting the diversity of customer needs. For

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<sup>1</sup> Australia's Future Tax System Review Panel (2009), Australia's Future Tax System Review Final Report, Part Two, Section A2: Retirement Incomes, p. 97.

<sup>2</sup> Explanatory Memorandum, *Superannuation Legislation Amendment (Choice of Superannuation Funds) Bill 2004*

many individuals, particularly those with more complex financial circumstances, tailored investment strategies supported by professional advice are both appropriate and necessary.

Choice operates within a strong regulatory framework. APRA regulated superannuation funds, including those offered through platforms, are subject to the same legislative and prudential requirements as other funds, including trustee duties, the best financial interests obligation, and ongoing regulatory oversight. Financial advisers are also subject to strict legal and professional obligations, including a duty to act in the best interests of their clients.

Policy settings should recognise that increased engagement and the exercise of choice are positive developments that support better long-term outcomes. Measures that constrain the ability of customers to seek advice or act on informed decisions risk entrenching inertia, limiting competition, and undermining the original policy intent of the system, without addressing the underlying causes of harm observed in recent cases.

A well-functioning superannuation system must therefore support both default and choice pathways, ensuring that customers can access appropriate products, advice, and services that reflect their individual needs and preferences.

## 4. Proposal 1: Strengthening Governance Requirements for Platform Trustees

### 4.1. Definition of Platforms

#### **Question 1. How should a “Platform RSE” and a “Platform Trustee” be defined?**

All APRA regulated superannuation trustees, including platform trustees, are already subject to the same legislative and prudential framework. This includes obligations to act in the best financial interests of members, maintain strong investment governance practices, and maintain a high level of operational due diligence. As such, FSC does not support separately defining or regulating “Platform RSEs” or “Platform Trustees”. We also note that regulators are currently undertaking enforcement and supervisory action under the existing legal framework.

The proposed approach of defining and applying additional regulations to Platform RSEs and Platform Trustees risks treating platforms as inherently high risk. However, all investment options carry some degree of risk. A person who exercises their legitimate choice to use a superannuation platform may elect to invest in products with varying risk profiles depending on their personal financial circumstances and objectives. In the platform context, these decisions are also generally made with the advice and assistance of a licensed financial adviser.

In those circumstances, members are protected by both the financial advice and superannuation regulatory frameworks, consistent with arrangements applying across the broader APRA regulated superannuation system.

As noted above, FSC does not support separately defining and regulating “Platform Trustees”. However, if the Government intends to proceed with targeted regulation for a subset of RSEs or RSEs, our view is that any such framework should apply consistently to superannuation offerings where members are able to exercise genuine investment choice across a broad range of products outside the relatively limited suite of premixed, trustee directed investment options typically available in simpler choice products.

This would necessarily capture all member directed investment structures, including superannuation platforms and other funds that may not traditionally be characterised as platforms but nevertheless provide members with access to a broad range of investment options, including single sector or specialist investment products. Many of the investment products accessible through APRA-regulated superannuation platforms are also available directly to consumers outside the platform environment, reinforcing that investment risk primarily arises from the characteristics of the underlying investment product rather than the platform through which it is accessed.

There have also been public examples of non-platform superannuation funds considering access to higher risk investment options, including cryptocurrency related investments and investments in higher risk illiquid or unlisted assets. The salient difference between a master trust and platform when it comes to investment risk is that where investment governance failures may have occurred in a master trust context, they are better able to spread losses across members. However, losses on a platform may be amplified due to concentration risk

and individualised outcomes. Despite this, we emphasise that the same investment governance framework and SIS Act obligations to consider diversification applies to platforms and non-platforms, and the onus remains on a platform to undertake robust investment governance on the options on their menu and manage for concentration risk as required under the existing legal framework.

On a technical level, FSC also submits that use of “RSE” as the relevant category marker may not be appropriate, as some platform trustees operate both wrap and master trust offerings within a single RSE structure. The RSE itself therefore may not provide a reliable basis on which to distinguish platform arrangements from other superannuation offerings.

The introduction of new statutory concepts such as “Platform RSE” and “Platform Trustee” may also create unnecessary interpretive complexity within the existing legislative framework. The Corporations Act already refers to “platform operators” in certain contexts, and the scope of that concept has been the subject of judicial consideration. Creating additional platform specific definitions without clear alignment to existing terminology risks uncertainty regarding the interaction between these concepts and the boundaries of the respective regulatory regimes.

**Recommendation 1:** There should not be an additional ‘Platform RSE’ or ‘Platform Trustee’ definition on the basis of platforms as a distinct or higher-risk category. For provisions looking to address specific risks arising in the platform context, application should be based on the presence of broad member-directed investment choice across all superannuation products.

**Question 2. Is the term pre-mixed trustee-directed product appropriate for capturing the non-platform and non-member directed subcategory of Choice products?**

The FSC does not consider the term “pre-mixed trustee-directed product” to be a necessary or particularly helpful regulatory distinction, and questions whether introducing an additional product subcategory is required at all. As noted in response to Question 1, the FSC does not support separately defining and regulating Platform RSEs or Platform Trustees, given all APRA-regulated trustees are already subject to the same legislative and prudential framework. Creating additional product classifications to support a differentiated regulatory regime would add further complexity to the system and create new boundary issues without clearly improving consumer outcomes.

However, if Government intends to proceed with this distinction, the term should be narrowly confined to products where investment decisions remain wholly trustee-directed through traditional diversified strategic asset allocation options, such as balanced, growth, high-growth and conservative options. These product types are generally well understood by consumers and provide clear disclosure of their investment objectives and risk profiles.

Beyond this, products that provide members with the ability to direct investments into specific sectors, asset classes or financial products should properly be regarded as broader choice products. However, the FSC reiterates that the presence of greater member choice or access to a wider investment menu should not, of itself, justify a separate regulatory treatment.

**Recommendation 2:** that Treasury avoid creating a supplementary regime for platform superannuation products.

#### 4.2. Requirement to set and enforce holding limits for investment options

##### **Question 3. Would mandatory holding limits be an effective safeguard to promote diversification and reduce overconcentration risk for platform members?**

All APRA-regulated superannuation trustees, including superannuation platforms, are already subject to the same legislative and prudential framework. This includes obligations under the SIS Act and SPS 530 to formulate and give effect to an investment strategy that considers diversification risk and the best financial interests of members. In this context, there is no clear regulatory gap specific to platforms that would warrant defining “platform trustee” as a distinct category or introducing a separate, more prescriptive regime for managing concentration risk.

It is also relevant that entry to wrap superannuation platforms is generally restricted to clients receiving financial advice. Financial advisers recommending the use of a platform product must comply with the best interests duty and related obligations, which require them to consider the client’s objectives, financial situation and needs (s961B(2)(a) of the Corporations Act). This provides an important safeguard against inappropriate concentration at the portfolio level.

With these laws and prudential standards in place, the introduction of mandatory holding limits would represent a blunt and potentially distortive intervention. While such limits may mitigate extreme concentration in some circumstances, they risk interfering with legitimate portfolio construction decisions, particularly in advised environments, and may reduce flexibility to accommodate different asset classes and investment strategies. We also consider prescriptive limits inappropriate due to the unintended consequences where applied without regard to the ‘whole-of-wealth’ context (people’s investment situation outside of superannuation).

Nevertheless, holding limits constitute an important part of a trustee’s arsenal in managing risk. In this regard, the [FSC’s Standard 31](#) *Wrap Superannuation Platform Trustee Investment and Adviser Governance Principles: Standard and Better Practice Guidance* provides a principles-based response. It requires trustees to consider the appropriateness of applying holding limits on each investment option, particularly where liquidity and valuation risks are present (section 4.1.2.3 of the Standard). This supports a targeted, risk-based approach rather than rigid, one-size-fits-all rules. FSC members constitute 89% of the wrap platform market according to FUM and must attest to meeting the Standard on an annual basis.

To the extent that mandatory holding limits are pursued, it would be critical to ensure a level playing field across the superannuation system. Any such limits, if they are to be applied consistently, should apply on a look-through basis across all superannuation products, so that equivalent exposures are treated consistently regardless of whether they are accessed directly via a platform or through pooled investment options within a master trust. The

regulatory framework should recognise that the underlying risk and potential member outcomes are economically equivalent across these structures.

Finally, care also needs to be taken to ensure holding limits don't have unintended consequences of driving members out of platforms, and the APRA-regulated environment, and into Self-Managed Superannuation Funds (SMSFs).

**Recommendation 3:** that Treasury should not introduce mandatory holding limits for investment options offered through platform products. The existing legislative and prudential framework, including trustee obligations under s52(6)(a)(ii) and (c) of the SIS Act, already provides a principles-based approach to managing concentration and diversification risks, complemented by industry-led standards such as the FSC Platform Standard 31. If limits are introduced, they should apply consistently on a look-through basis across all superannuation products to ensure competitive neutrality and consistent treatment of economically equivalent risks.

#### **Question 4. What characteristics of investment options should be considered when setting holding limits?**

Consistent with the FSC Standard 31, the appropriateness of applying holding limits should be assessed on an investment risk basis, having regard to the specific characteristics of the investment option. In particular, liquidity and valuation risks are key considerations. Investment options that may warrant closer consideration of holding limits include those with limited or uncertain redemption windows, exposure to illiquid or hard-to-value assets, or where valuation practices are less frequent or rely on less observable inputs. In these circumstances, holding limits may be an appropriate tool to manage member risk.

Governance-related factors are also relevant. For example, where an investment option meets trustee expectations of delivering best financial outcomes for members, but is managed by a fund manager with a more limited track record, trustees may consider whether holding limits are appropriate on a provisional basis until a sufficient track record has been established. However, investment options that present any risk of loss due to the underlying fund manager's or RE's misconduct should not be made available to members (in any superannuation fund).

Holding limits shouldn't be applied on a set and forget basis. FSC Standard 31 requires trustees to consider the ongoing appropriateness of any holding limits, or whether new holding limits need to be applied given changes in liquidity, asset allocation or risk/return profile (4.2.4.7).

These factors should guide, but not mechanically determine, the application of limits. The appropriateness of holding limits should be assessed holistically, having regard to the role of the option within a diversified portfolio and the broader investment context.

### 4.3. Codified due diligence requirements

#### Question 5. Should codified due diligence obligations be introduced?

The FSC does not consider that a new legal obligation codifying due diligence obligations is necessary. Superannuation trustees are already subject to comprehensive obligations under the SIS Act and Prudential Standard SPS 530, which require them to develop, maintain and implement an effective due diligence process for the selection of investments. This includes assessing risk, performance expectations under a range of stress scenarios, liquidity and diversification, and ensuring that investment decisions are made in the best financial interests of members.

Introducing prescriptive due diligence requirements risks duplicating existing obligations and may inadvertently encourage a “checklist” or form-over-substance approach, rather than the exercise of informed judgement that SPS 530 is designed to promote. The key issue is not the absence of obligations, but how effectively they are implemented in practice.

**Recommendation 4:** That Treasury does not introduce codified due diligence obligations and instead continues to rely on the existing legislative and prudential framework, with a focus on supporting effective implementation of current requirements.

#### Question 6. What minimum elements should be specified as part of a codified due diligence obligation?

The FSC Standard 31 and accompanying better practice guidance, released in April 2026, were developed to support platform trustees in operationalising their existing obligations under the SIS Act and SPS 530. In particular, the Standard requires trustees to apply appropriate initial due diligence when onboarding investment options onto their investment menu, including consideration of the investment option’s:

- responsible entity and investment manager (including governance, track record regulatory history and conflicts management);
- fees and performance;
- liquidity and redemption terms;
- valuation methodologies and frequency;
- consistency of disclosure (e.g. PDS and TMD); and
- the use of external research and ratings as one input among many (4.1.3).

Finally, the investment option should not just meet the bare minimum regulatory requirements, but trustees should continue to form a forward-looking view that each option remains appropriate for inclusion on the investment menu, consistent with the fund’s investment strategy and members’ best financial interests (4.2.2).

If Treasury observes a need for clearer expectations around the application of due diligence requirements when onboarding an investment option, this would be best delivered through APRA prudential guidance (for example, updates to SPG 530). This approach would allow expectations to build upon, rather than duplicate, existing obligations, and provides flexibility

to refine the guidance over time without hard-coding prescriptive requirements into primary legislation.

**Recommendation 5:** that Treasury does not introduce codified due diligence obligations for platform trustees. Instead, it should rely on the existing SPS 530 framework, supported by principles-based industry guidance such as the FSC Standard 31. Treasury could explore having APRA update their prudential guidance with reference to the expected due diligence when onboarding investment options.

#### 4.4. Limiting certain conflicted arrangements

##### **Question 7. Are platform-specific restrictions needed to address conflicted payments or benefits that are linked to product listing, preferred placement, continued availability, or member flows?**

The FSC considers that the existing laws around conflicted remuneration and conflicts management are adequate to address the risks associated with payments or benefits linked to product listing, placement, or member flows. Prudent trustees already appropriately manage these obligations.

The consultation paper explicitly targets the following scenarios as potentially needing further restrictions:

- Payments linked to product listing or continued availability on a platform – including fees, rebates, marketing payments or other benefits that are provided in exchange for access to the platform, preferred placement, or continued availability of the product.
- Payments that operate like volume incentives – including payments that increase as member flows increase, which may create incentives to maintain or promote an option despite emerging risks.

The Corporations Act already contains explicit and enforceable provisions in this area. In particular, the conflicted remuneration provisions in Part 7.7A prohibit benefits that could reasonably be expected to influence financial product advice to retail clients.

Section 964A(1) of the Corporations Act explicitly bans volume-based shelf-space fees. That is, payments from fund managers to platform operators based on the number of products listed or level of funds under management in those products. The purpose of the ban is to ensure that product issuers or fund managers can't 'purchase' shelf space or preferential positions on platforms. This is explored further in ASIC's Regulatory Guide 246 on Conflicted and other banned remuneration. This ban has been in place since 2013 and was introduced as part of the Future of Financial Advice (FOFA) Reforms.

Importantly, there are commercially legitimate and common scenarios where product issuers pay fees to platform operators/trustees. This is typically to cover the administrative costs to the platform operator/trustee associated with the listing and reporting on a product.

Apart from the conflicted remuneration provisions, licensees are also subject to broader obligations under s912A of the Corporations Act to maintain adequate conflicts management arrangements and provide services efficiently, honestly and fairly. Trustees also have duties

under s52 of the SIS Act to act in the best financial interests of members and under Prudential Standard SPS 521 to identify, avoid and manage conflicts of interest. Taken together, these obligations operate across the value chain and are not limited to a particular distribution model.

**Recommendation 6:** That Treasury does not introduce platform-specific restrictions on conflicted payments or benefits and instead continues to rely on the existing legislative and prudential framework, supported by strong enforcement, to address risks of conflicted remuneration.

**Question 7.1. If so, which types of payments or arrangements pose the greatest risk of undermining a Platform Trustee’s independence?**

Many arrangements that might be characterised as “linked to platform access or volumes of member flows” are commercially legitimate and serve a functional purpose. As mentioned above, platform fee structures typically involve administration or service fees, reflecting the cost to the platform of custody, reporting, technology and transaction processing. These arrangements are not problematic where they are:

- transparent and appropriately disclosed;
- commensurate with the services provided; and
- subject to robust conflicts management and governance oversight.

**Recommendation 7:** That if Treasury does identify deficiencies and recommend changes to the conflicted remuneration framework, that these recommendations preserve the ability for platforms to enter into legitimate commercial arrangements that are appropriately disclosed and governed.

**Question 8. How can restrictions be designed to stop harmful incentives without restricting legitimate operational arrangements?**

To the extent that Treasury identifies evidence of weaknesses in specific models or practices, any regulatory response should be targeted and evidence-based. In particular, care should be taken to ensure that any intervention does not inadvertently capture or disrupt legitimate commercial arrangements, such as listing or shelf space fees that cover trustee costs associated with listing and maintaining a product on their platform. These payments are not conflicted remuneration and recover the costs associated with the set-up and ongoing administration activity relating to making the investment available to members. It is appropriate to charge product issuers for these costs rather than increase costs for superannuation members.

If Treasury is looking to strengthen conflicted remuneration laws, reforms should be targeted towards the types of arrangements allegedly exploited in the Shield and First Guardian matters – for example, where incentives are structured through unregulated lead generation models, outside the licensing perimeter, or through indirect or third-party arrangements that obscure links between remuneration and downstream advice or product outcomes.

Bringing prescribed, high-risk lead generators within the AFSL regime would ensure they are subject to conduct obligations, oversight and enforcement. This would also strengthen the operation of the conflicted remuneration framework by ensuring lead generators captured within the licensing perimeter are subject to existing obligations where they act as representatives.

The FSC also supports a targeted extension of the conflicted remuneration provisions to address residual anti-avoidance risks where lead generation arrangements are structured outside the licensing perimeter or where payments are channelled indirectly (e.g. through intermediaries or service fees) to obscure their connection to advice outcomes. This should operate as a targeted anti-avoidance measure to ensure existing conflicted remuneration rules cannot be circumvented through third-party or indirect arrangements, rather than broadening the framework more generally. These recommendations are explored more fully in our response to Treasury's consultation on Curbing Lead Generation Activity.

The FSC also strongly supports strengthening the enforcement of existing conflicted remuneration and conflicts management obligations. Where there is evidence of misconduct or arrangements that are operating in a way that undermines member outcomes, the appropriate response is to clarify the application of existing laws and enforce that law. This will be more effective than introducing additional layers of regulation in an already comprehensive framework.

**Recommendation 8:** That Treasury explore bringing prescribed lead generation activities into the financial services' regulatory framework, including by ensuring existing conflicted remuneration provisions apply appropriately to lead generation arrangements and cannot be circumvented through indirect or third-party structures.

#### 4.5. Restricting certain trustee operating models

##### **Question 9. What features of an outsourced model may reduce governance effectiveness?**

The FSC considers that all models should be held to the same standards of governance effectiveness, consistent with the existing framework where all trustees are subject to the same legal and prudential obligations.

That said, certain features of external trustee models may give rise to perceived or potential governance challenges if not appropriately managed. These may include situations where there is a separation between the entity responsible for day-to-day operations and the entity that holds formal legal accountability. These risks, however, are arguably not insurmountable, and can be effectively mitigated through clear delineation of responsibilities, strong contractual arrangements, and robust oversight and governance frameworks.

However, concerns have been raised with respect to the application of the Financial Accountability Regime in external trustee models because key operational, governance and risk management functions may in practice be performed by the platform operator, while formal legal accountability remains with the external trustee. One way to help address this issue would be to expand the FAR regime to either:

1. Capture platform operators (that use an external trustee) to be accountable entities under FAR, or
2. Capture individuals employed at the platform operator to be accountable persons where they have senior executive responsibilities that may impact member outcomes (i.e. governance or risk management functions).

This would help ensure that accountability more closely aligns with where key operational and governance decisions are being made in practice, thereby reducing the risk of gaps between legal responsibility and functional control.

**Recommendation 9:** That Treasury recognise that regardless of model, governance effectiveness should be assessed consistently, noting that risks in external trustee models can be mitigated through clear delineation of responsibilities, strong contractual arrangements, and robust oversight frameworks, rather than through structural restrictions.

**Recommendation 10:** That Treasury consider expanding the Financial Accountability Regime to either:

1. Capture platform operators (that use an external trustee) to be accountable entities under FAR, or
2. Capture individuals employed at the platform operator to be accountable persons where they have senior executive responsibilities that may impact member outcomes (i.e. governance or risk management functions).

**Question 10. What are the characteristics that could be reflected when differentiating between varying trustee business models, to ensure governance obligations are appropriately calibrated to Platform Trustee environments?**

The FSC considers that any differentiation between trustee business models should focus on functional characteristics that are relevant to governance risk, rather than the legal form of the model itself.

Importantly, the focus should remain on ensuring that trustees retain sufficient capability, resourcing, and access to information to effectively discharge their obligations. Where outsourcing arrangements are in place, governance expectations should ensure there is clear accountability, effective oversight, and strong engagement between the trustee and service providers.

If Treasury considers that additional safeguards are warranted, it may be appropriate to require entities operating with external trustee arrangements to maintain a defined internal function or unit responsible for managing the relationship with the external trustee and supporting oversight.

**Recommendation 11:** That Treasury calibrate any differentiation between trustee business models based on functional characteristics relevant to governance risk, including the degree of trustee control, oversight capability, and reliance on third parties, rather than the legal structure of the model.

**Question 11. What would the impact be of banning the trustee for hire model?**

The FSC considers that the issues observed in the Shield and First Guardian incidents are more appropriately attributed to fraud, gaps in supervision and enforcement, and inconsistent application of existing regulatory obligations rather than deficiencies in a certain trustee model. Therefore, it is anticipated that the proposal to restrict or ban the external trustee model is unlikely to address the underlying drivers of poor member outcomes.

**Recommendation 12:** That Treasury maintain a model-agnostic regulatory approach, under which all trustees continue to be subject to the same governance obligations. If governance deficiencies unique to the external trustee model are identified, Treasury could explore proportionate options such as requiring entities that have engaged external trustees to maintain a defined internal function or unit responsible for engaging with the external trustee.

## 5. Proposal 2: Increase penalties under the SIS Act

### 5.1. Increased penalties

#### **Question 12. Should SIS Act penalties increase to better match comparable penalties in the Corporations Act 2001?**

The FSC supports increasing penalties under the SIS Act to better align with those in the Corporations Act 2001, if these penalties are applied consistently across the system and there is a defined criterion for assessing penalty amounts consistently across the system. Greater alignment would improve consistency across the regulatory framework and provide regulators with clearer and more efficient enforcement pathways where similar misconduct may give rise to breaches under both regimes. It would also reduce the potential for regulatory arbitrage or distorted enforcement choices driven by differing penalty settings, rather than the nature of the misconduct itself.

Importantly, aligning penalties can strengthen deterrence without introducing additional day-to-day regulatory burden for compliant trustees, ensuring that enforcement settings remain proportionate to the scale of potential consumer harm.

**Recommendation 13:** that SIS Act penalties be increased to better align with the Corporations Act 2001, to support consistent and efficient enforcement without imposing additional regulatory burden on compliant trustees.

#### **Question 13. Would higher maximum SIS Act penalties incentivise better Trustee governance?**

The FSC considers that trustee governance is already strongly driven by the existing legislative and prudential framework, including fiduciary duties, the best financial interests obligation, and APRA's prudential standards. These settings create clear expectations and accountability for trustees in managing members' retirement savings.

While appropriately calibrated penalties play a role in supporting deterrence and enforcement, governance outcomes are more directly influenced by the effectiveness of supervision, oversight, and existing obligations. Framing governance failures primarily as a function of insufficient penalties risks overlooking the broader regulatory architecture and may imply that trustees are not already operating under strong incentives to act in members' best interests.

Accordingly, while higher penalties may support enforcement in cases of misconduct, they should be considered as part of a broader framework that emphasises effective supervision and consistent application of existing rules.

## 6. Proposal 3: Introduce a waiting period for inter-fund superannuation switches

### 6.1. Waiting period

#### **Question 14. What length of waiting period would ensure consumers have time to reflect on information before they make a decision?**

The FSC is not supportive of introducing waiting periods for the switching of superannuation.

First, this would not address the harms of Shield and First Guardian collapse. Lead determinations by the Australian Financial Complaints Authority (AFCA) indicate that a proportion of the lead generation activity often occurred over several months and therefore, waiting periods would not have stopped the harm.

Secondly, the three-day rollover Service Level Agreement (SLA) was introduced to prevent funds from unduly delaying the process of switching with self-interested reasoning. It was introduced primarily as a consumer protection measure and already has leeway for funds who suspect that a customer might be subject to a scam, fraud, or other similar behaviour. However, the current regulatory and legislative framework governing SuperStream transfers does not provide sufficient flexibility or clarity for trustees to introduce additional verification steps where there is no specific suspicion of fraud, even where further validation may be prudent. This creates a gap in the system's ability to proactively detect and prevent fraudulent or inappropriate rollovers. Rather than introducing blanket waiting periods for all consumers, legislative reform to support stronger authentication processes, including positive consent mechanisms and clearer trustee discretion to undertake additional verification, would represent a more targeted and effective response to fraud and consumer harm.

Thirdly, to allow a waiting period might add undue confusion to a consumer who has already made a decision to exercise choice. This would be particularly true if the incumbent fund were to be able to use that time to effectively hawk their own products in an effort to get them to stay, the risk of which increases with the proposed mandated trustee communication to individuals who indicate they want to switch fund. Further, where a customer has received personal financial advice, communications from the transferring fund during a waiting period may create confusion or uncertainty. Superannuation trustees are generally not licensed or authorised to provide personal financial advice in the context of a rollover and any warnings or retention communications would necessarily be general in nature. This creates a risk of conflicting messages, where generalised fund communications may cut across more detailed, tailored personal advice that has been provided based on the customer's full financial circumstances, objectives and needs.

Finally, to implement delays to the switching process would not be a simple administrative switch. The FSC has outlined below some of the administrative difficulties associated with introducing switching delays but it is important to note that this would require wholesale system change for little benefit, noting that switching delays would not have prevented the harms of Shield and First Guardian.

**Recommendation 14:** that waiting periods for superannuation switching not be introduced, as they would not address the harms identified in recent failures, would undermine existing consumer protections, and would impose unnecessary complexity and system-wide costs for limited benefit.

**Question 15. Should members switching superannuation funds be required to reconfirm their choice following a waiting period?**

The FSC does not support requiring members to reconfirm their decision to switch following a waiting period. This measure would introduce additional friction into the switching process without addressing the underlying causes of harm identified in recent cases, where decisions were often influenced over extended periods rather than made impulsively.

Requiring reconfirmation risks reducing beneficial switching by disengaging consumers who have already made an informed decision, potentially leaving them in underperforming or unsuitable products. It would also duplicate existing consumer protections, including the current rollover timeframes and safeguards for suspected fraud or misconduct, while adding unnecessary complexity to the system.

**Recommendation 15:** that a reconfirmation requirement following a waiting period not be introduced, as it would not address the causes of consumer harm, would reduce beneficial switching through added friction, and would duplicate existing protections while increasing system complexity.

**Question 16. Would a waiting period have any negative impacts on consumers?**

A waiting period would introduce additional friction into the switching process, which risks discouraging or delaying beneficial switching by consumers who have already made an informed decision. This may result in individuals remaining in underperforming or unsuitable products for longer than necessary. Research conducted by NMG Consulting on behalf of the FSC has found that a person making simple changes to their superannuation portfolio to access higher growth or better fees at an earlier stage in their career could be \$690,000 better off in retirement when switching to a high growth option, or \$1.2M better off in retirement if switching to a lower fee option.<sup>3</sup> This is because while default products provide decent coverage for everyone, they are optimal for no one. The research indicates that more than 7 million members under the age of 50 are structurally underexposed to growth assets, potentially leaving them \$540K worse off at retirement.<sup>4</sup>

It could also create confusion, particularly where consumers receive mixed messaging from incumbent funds during the delay period, including potential retention activity. More broadly, it would undermine the intent of the existing three-day rollover framework, which was designed to facilitate efficient switching as a consumer protection, and would duplicate

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<sup>3</sup> FSC NMG Research (provided to Treasury separately)

<sup>4</sup> FSC NMG Research (provided to Treasury separately)

existing safeguards without addressing the underlying causes of harm observed in recent cases.

Introducing a waiting period would also create significant operational and systems complexity for trustees, requiring material changes to rollover processing systems, member communications and administrative processes. These implementation costs would ultimately be borne by members, either directly or indirectly through higher fees, creating system-wide costs for a measure that is unlikely to address the misconduct it is intended to prevent.

**Question 17. How long after the waiting period should a rollover request lapse?**

The FSC does not support the introduction of a waiting period and therefore does not consider it appropriate to prescribe a lapse period. Introducing both a waiting period and a lapse mechanism would add unnecessary complexity and administrative burden for limited consumer benefit. The existing rollover framework, including the three-day service standard and safeguards for suspected fraud or misconduct, provides an appropriate balance between efficiency and consumer protection.

**Question 18. What challenges may funds face in implementing a waiting period, and how could these challenges be mitigated?**

The proposal to mandate superannuation switching delays would fundamentally alter the role of the transferring fund to delay or effectively validate a decision it is not in a position to assess. The transferring trustee has no visibility of the receiving product, no insight into whether personal financial advice has been provided, and no basis on which to assess suitability. This is inconsistent with the design of the current system, which relies on trustees acting on valid member instructions rather than second-guessing member choice.

It would also undermine with existing regulatory settings. The current three-day rollover service standard was introduced as a consumer protection measure to ensure timely execution of member choice and to prevent unnecessary delays in rollover processing. A mandatory waiting period would directly undermine this framework.

To the extent the policy concern relates to fraud or inappropriate rollovers, a mandatory waiting period is also the wrong regulatory tool. The current SuperStream framework does not provide trustees with sufficient legislative flexibility or operational clarity to undertake additional verification steps in the absence of a specific suspicion of fraud. In particular, while trustees are subject to a three-business day rollover service standard, the framework does not clearly articulate whether a trustee may pause processing to undertake reasonable fraud checks before that service standard begins to run. This creates uncertainty for trustees seeking to balance timely processing obligations against fraud prevention and member protection responsibilities.

Rather than introducing blanket waiting periods, legislative and regulatory reform should clarify that trustees are permitted to temporarily pause rollover processing for the purpose of undertaking reasonable fraud and identity verification checks where appropriate. This could

be supported through stronger authentication controls, positive consent mechanisms, and clearer trustee discretion to seek additional verification before processing a rollover request.

Beyond these policy issues, implementing a waiting period will create significant administrative burden, owing to the multiple ways in which rollover requests are initiated and received.

Rollover requests are initiated through multiple channels, including directly by the member, via an authorised representative, through the transferring or receiving fund, or via the myGov portal administered by the Australian Taxation Office (ATO). These pathways operate across different systems, data standards and authentication frameworks. There is no existing capability to consistently “pause” a transaction and require reconfirmation across all channels. Introducing a waiting period would therefore require coordinated changes across funds, administrators, gateways and the ATO, including new infrastructure to manage transaction status, timing and communications.

From a data perspective, the transferring fund typically only receives a Unique Superannuation Identifier (USI) for the receiving fund, which is used to obtain payment and messaging details via the ATO’s Fund Validation Service (FVS). It does not have visibility of the specific product or investment option(s) into which the member is transferring. If the policy intent is to apply waiting periods to “higher risk products”, this would require a fundamental redesign of SuperStream data standards to capture and validate product and potentially investment option level information for thousands of products which would require to be maintained to capture ongoing changes. This capability does not currently exist and would require significant industry-wide system uplift, including changes to the FVS.

The proposed reconfirmation step introduces further practical challenges. It assumes that transferring funds can reliably contact members within a prescribed timeframe. In practice, this is often not the case. For many members, particularly ‘default members’ whose accounts are established by employers, the transferring fund may have had limited recent interaction. Where rollovers are initiated via third parties or other funds, this challenge is compounded. Contact details may be outdated, and members may be overseas, on leave, or otherwise unavailable. Funds cannot reasonably guarantee successful contact or response within a five-day window.

For example, a member initiates a rollover via the myGov portal while overseas. The transferring fund receives a valid instruction but cannot contact the member within five days due to outdated details or time zone constraints. The transaction would lapse, not because of any issue with the instruction, but because the system cannot complete a reconfirmation step it was never designed to support.

This creates a direct operational conflict. Trustees would be required to pause a valid member-initiated transaction but may have no practical means of progressing it. The likely result would be failed or lapsed rollovers, increased exception handling, and a poorer member experience. Outcomes would be driven by data limitations rather than member intent.

Delays in switching would also have broader system impacts, particularly in the context of Payday Super implementation. Introducing additional friction into fund flows risks disrupting

contribution allocation, account consolidation and reporting processes at a time of significant reform, increasing operational risk across the system.

Finally, the scale of change required should not be underestimated. Implementation would involve redesign of SuperStream message standards, new transaction state management, changes to gateway and administrator systems, new communication and authentication workflows, and material updates to ATO infrastructure. This would require extensive industry coordination, testing and investment, with high delivery risk and ongoing complexity.

Taken together, the proposal attempts to solve a behavioural problem through system design that the system is not equipped to support. It is not operationally workable within the current architecture and would impose significant cost and complexity for limited, if any, benefit.

**Recommendation 16:** That waiting periods for superannuation switching not be introduced. They would not address the causes of recent consumer harm, would undermine the existing rollover framework, and would introduce disproportionate and significant cost, complexity and risk across the system.

**Question 19. Should restrictions apply on communications between a financial adviser and the member after the onset of the waiting period?**

The FSC does not support the introduction of restrictions on communications between a financial adviser and a member following the onset of a waiting period. Financial advisers are a regulated profession, subject to statutory obligations including the best interests duty, and play a critical role in supporting consumers to make informed financial decisions.

Restricting communication during this period would limit a member's ability to seek clarification, receive ongoing advice, or respond to changes in their personal or financial circumstances. This risks creating confusion and may lead to poorer consumer outcomes, particularly where advice is necessary to ensure decisions remain appropriate.

Importantly, financial advice interactions are rarely limited to a single issue such as superannuation switching. In practice, advisers may provide advice across a range of matters in a single interaction, including retirement planning, tax, insurance, estate planning and broader investment strategy. Attempting to restrict communications only to matters relating to switching would be operationally complex and difficult, if not impossible, to administer or enforce. It would also create uncertainty as to whether advisers and clients could continue to engage on unrelated financial matters during the waiting period.

More broadly, such restrictions would interfere with legitimate adviser-client relationships without clear evidence that they would address the underlying causes of harm identified in recent cases. Consumers should retain the ability to engage with their adviser at all times, including during any period in which they are considering or actioning a superannuation switch.

**Recommendation 17:** that no restrictions be placed on communications between financial advisers and members during any waiting period, to ensure consumers retain access to regulated advice and informed decision making.

**Question 20. Should consideration be given to a mandatory waiting period applied between the provision of super switching related financial advice and the acceptance of such advice?**

The FSC does not support the introduction of a mandatory waiting period between the provision of superannuation switching advice and the acceptance of that advice. Financial advice is already subject to a comprehensive regulatory framework, including the best interests duty, disclosure requirements, and documentation through a Statement of Advice, all of which are designed to ensure consumers are informed and protected when making decisions.

Introducing a mandatory delay would not address the underlying causes of harm identified in recent cases, where decisions were often influenced over extended periods rather than made impulsively. Instead, it would create unnecessary friction, delay legitimate transactions, and risk poorer consumer outcomes by preventing timely action, including switching into more suitable or better-performing products.

More broadly, such a requirement would duplicate existing safeguards while adding complexity to the system and interfering with the provision of timely, tailored financial advice.

**Recommendation 18:** The FSC recommends that a mandatory waiting period between the provision and acceptance of superannuation switching advice not be introduced, as it would duplicate existing safeguards, delay legitimate decision making, and not address the causes of recent consumer harm.

## 6.2. Coverage

**Question 21. Should a waiting period apply to all switches, or to a prescribed subset?**

As noted above, the FSC does not support applying a waiting period to any superannuation switching behaviour. However, if the Government were to pursue this measure, it should be applied equally to all APRA regulated superannuation switching.

To single out a particular subset of funds would only reduce competition in the superannuation sector, which does not lead to good outcomes for consumers. It would also create incentives for product providers to restructure or design products in a way that falls outside any prescribed definition, creating regulatory arbitrage and undermining the policy intent of the measure. Recent data indicates that many consumers are choosing to pursue broad choice products through superannuation platforms. Commentators have put this down to consumers valuing better customer service, including access to financial advice. The competitive pressure of loss of customers to competitor funds has the positive effect of encouraging incumbent funds to uplift their customer service offering.

The FSC also notes that the concept of “risk” in this context should be clearly distinguished. Investment risk is a legitimate and necessary feature of investment choice and reflects the characteristics of the underlying asset or strategy. Governance or conduct risk, by contrast, relates to failures in product oversight, due diligence, conflicts management or misconduct. Treasury’s consultation appears to conflate these concepts by linking broader investment menus with higher risk. While there is a legitimate place for higher investment risk products within superannuation (subject to existing requirements around diversification strategy), there is no place for products that present elevated governance or conduct risk, and these should be identified and excluded by trustees through robust investment governance processes.

The FSC reminds Government that the exercising of choice is legitimate in the superannuation context and any limiting of choice should only be done where it can be proven that it will have exceptional consumer benefit. As has been noted previously, switching delays would not have prevented the harms associated with the Shield and First Guardian collapses and so would provide little consumer benefit.

#### **Question 22. How should ‘higher-risk product’ be defined?**

The FSC does not consider that a prescriptive or static definition of a “higher-risk product” would be appropriate within the superannuation context. Risk in superannuation is not determined at the product level alone, but by the underlying investments, portfolio construction, and the circumstances of the individual member.

A rigid definition risks being both under-inclusive and over-inclusive, potentially capturing legitimate and well-governed investment options while failing to identify emerging risks. It may also create incentives for regulatory arbitrage or encourage product structuring to avoid classification thresholds.

Where risk differentiation is required, a more appropriate approach would be principles-based and consider a range of factors, such as complexity, liquidity, leverage, transparency, and governance characteristics. These factors are already reflected in existing trustee obligations under the SIS Act and SPS 530, which require trustees to assess and manage investment risks in the best financial interests of members.

**Recommendation 19:** That Treasury does not introduce a prescriptive definition of “higher-risk product”. Instead, any consideration of product risk should be principles-based and aligned with existing trustee obligations, avoiding rigid classifications that may create unintended consequences or reduce flexibility in investment offerings.

#### **Question 23. Are there exemptions which should be considered so as not to unduly restrict member choice?**

The FSC considers that member choice is a fundamental feature of the superannuation system and should not be unduly restricted. A member choosing to invest in a higher investment risk product is not, in itself, a regulatory concern where that decision is informed, deliberate, and consistent with their objectives and risk tolerance. This should be

distinguished from governance or conduct risk. While there is a legitimate place for higher investment risk products in a diversified portfolio, there should be no place in superannuation for products where there is a realistic prospect of fraud, theft, misconduct or catastrophic product failure arising from inadequate governance or conduct settings. Trustees should identify and exclude these products through robust investment governance and due diligence processes.

The policy focus should not be on preventing all instances of investment loss, which is an inherent feature of market participation, but on addressing circumstances where losses arise from misconduct, fraud, or systemic governance failures, such as those observed in recent cases. In many cases, the underlying issue is not the existence of investment risk itself, but inadequate disclosure, governance or oversight at the investment manager or responsible entity level.

**Recommendation 20:** Treasury should recognise that member choice is a fundamental part of the system, and differentiate between legitimate investment risk, and governance risk.

### 6.3. Warnings/Notifications

#### **Question 24. What content should be included in notifications to consumers?**

If the Government is minded to introduce a waiting period for superannuation switching, which the FSC does not support on the basis that it would not address the harms observed in the Shield and First Guardian matters, careful consideration should be given to the communication settings that apply during that period.

In particular, there should be clear and enforceable limits on the types of communications that can be directed to members once a switching decision has been initiated. Allowing the incumbent fund to engage in retention focused communications, including recommendations to remain in the existing product or promotion of its own products, would risk confusing members and undermining the integrity of the process. Such interactions may also raise concerns in relation to unsolicited contact and conduct that is inconsistent with the intent of the anti-hawking regime.

A waiting period should not become an opportunity for competing or persuasive messaging. Instead, the framework should support members to reflect on their decision in a neutral and informed environment, without being subject to additional influence.

In addition, consideration should be given to allowing members to opt out of any mandatory waiting period where they have made an informed and deliberate decision to proceed. A rigid application of a waiting period in all circumstances may unnecessarily delay legitimate transactions and interfere with the timely implementation of appropriate financial advice. An opt out mechanism, supported by appropriate safeguards, would better balance the objective of protecting members from harm with the need to preserve individual autonomy and efficient decision making.

During any such period, communications should be limited to factual and clarifying information that assists the customer to confirm that their decision has been made freely and

on an informed basis. This may include prompts or confirmations designed to ensure that the member is not subject to undue pressure, that they understand any advice received, and that, where relevant, the advice has been provided by a licensed professional.

Where an opt out mechanism is provided, it should be accompanied by clear and simple confirmation processes that require the member to acknowledge key aspects of their decision, including that they understand the nature of the switch and are choosing to proceed without delay. This would provide an additional safeguard without imposing unnecessary friction on members who are confident in their decision.

In the context of switching to a self-managed superannuation fund, the FSC could support targeted measures to ensure members clearly understand the consequences of such a decision. This could include explicit disclosure that the member will be moving outside the APRA regulated environment, including the loss of protections associated with the APRA regulated environment, such as trustee oversight and access to external dispute resolution arrangements, and that they will assume direct responsibility for the management, compliance and risks associated with the fund.

Overall, if a waiting period is introduced, it should be designed in a way that preserves member autonomy, avoids introducing new sources of influence, and focuses on improving understanding rather than facilitating further marketing or retention activity.

**Recommendation 21:** If a waiting period is introduced, it should strictly limit communications to factual information, prohibit retention focused activity, and allow members to opt out where they have made an informed decision.

### **Question 25. Are regulators or members' current funds more appropriate to provide these warnings?**

We reiterate that we do not support member funds being mandated to provide warnings when switching occurs within the APRA regulated environment. We also reiterate the risk that the members' current fund delivering the warning may effectively act as a marketing and retention tool.

However, where strictly factual warnings are mandated (such as indicating that a member is leaving an APRA regulated environment), the incumbent fund is better placed to provide these warnings, as they have direct relationships with members, access to relevant account information, and established communication channels that allow for timely and contextualised messaging. This enables warnings to be delivered in a way that is more relevant and effective at the point of decision making. Although, as noted above, this would be administratively very difficult.

Regulators play an important role in setting expectations, guidance, and standards for such communications, but are less well positioned to deliver member specific warnings in a timely and targeted manner.

**Recommendation 22:** Treasury note that it would be administratively difficult for funds to deliver warnings owing to the complexity of SuperStream and ATO architecture.

## 6.4. Implementation

### **Question 26. Would implementation of this proposal result in significant compliance costs for trustees?**

Implementation of this proposal would be likely to result in increased compliance and operational costs for trustees. Introducing new requirements around warnings, communication controls, and process changes would require system enhancements, additional monitoring, and ongoing governance oversight. These costs would ultimately be borne by customers and should be carefully weighed against the expected benefits, particularly where existing regulatory obligations already provide a strong framework for consumer protection.

## 6.5. Visibility of fund flows

### **Question 27. In addition to a waiting period to slow down the super switching process, increased regulator visibility of switching could also work to ensure members are better protected from potential harm. Would there be benefit from requiring receiving funds to collect and provide information on flows into higher-risk products?**

The FSC supports efforts to strengthen intelligence sharing both within the industry and between industry and the regulators to enable earlier identification of emerging risks, disruption of misconduct and protecting members from potential harm.

We consider that intelligence sharing between industry and regulators would be most useful if it operated on a genuinely two-way basis, rather than being confined solely to reporting requirements imposed on industry. For example, should a data collection requirement around product flows be implemented, there may be value in ASIC sharing aggregated data, emerging risk indicators and observations on areas requiring uplift. This could support industry participants to respond to emerging issues in a more proactive manner.

Regarding intelligence sharing within industry, the FSC is currently exploring the potential establishment of a platform information-sharing forum to facilitate more structured discussion of emerging risk indicators. However, a key roadblock to more candid engagement is the operation of competition and defamation laws. Firms may observe concerning or anomalous activity but be reluctant to share details where misconduct is not yet confirmed, due to legal exposure or reputational risk. The FSC has explored these issues further, and made recommendations, in our submission to Treasury's consultation on [Enhancing Oversight and Governance of Managed Investment Schemes](#).

With respect to the proposal that trustees provide information on "higher risk products," the FSC does not consider it desirable or practical to establish prescriptive or static definitions of "high-risk products" for these purposes. Within the APRA-regulated environment, investment risk is multifaceted, dynamic, and context-dependent. Risk may be influenced by factors including the nature of the underlying assets, portfolio construction, liquidity profile, leverage, governance arrangements, trustee or responsible entity resourcing, and member circumstances, rather than just the investment risk profile of the superannuation product

itself. Accordingly, overly prescriptive classifications may risk inconsistent application, mischaracterisation of risk, regulatory arbitrage, and unintended market distortions over time.

The FSC considers that any enhanced visibility regime should instead focus on supporting regulator oversight of concerning conduct, switching patterns, concentration trends, and emerging governance concerns, rather than relying on a prescriptive product risk labelling framework. Any additional reporting obligations should remain targeted, proportionate, and aligned with existing regulatory reporting mechanisms to minimise duplication and unnecessary compliance burden. Leveraging existing reporting frameworks and regulatory data channels may provide a more effective and operationally efficient approach than introducing entirely new reporting obligations.

**Recommendation 23:** Any enhancement to regulator visibility should support proportionate intelligence sharing and risk based supervision, while avoiding reliance on prescriptive or static definitions of “higher risk” products and minimising unnecessary duplication in reporting obligations.

## 6.6. International experience

**Question 28. What are the potential benefits and harms of imposing conditions on the types of asset classes that schemes may invest in when offered to retail clients? How might the market impacts of such a restriction in an Australian context differ to the experience of alternative jurisdictions?**

The FSC does not support imposing broad restrictions on the types of asset classes that registered managed investment schemes (MISs) may invest in when offered to retail clients.

Retail investors should retain the ability to access a wide range of investment opportunities through regulated vehicles. Restricting access based on asset class would limit investor choice and may prevent retail investors from accessing legitimate investment strategies that support diversification and long-term outcomes. It may also reduce the availability of capital across parts of the economy that rely on MIS structures.

The Australian framework already includes a range of safeguards designed to ensure that products are distributed appropriately. In particular, the Design and Distribution Obligations (DDO) regime requires issuers to define a target market and take reasonable steps to ensure that products are distributed only to consumers for whom they are likely to be appropriate. ASIC has strong powers under this regime, including the ability to issue stop orders where there are deficiencies in a product’s target market determination (TMD) or where distribution is inconsistent with the target market, as well as powers to require issuers to amend their approach where TMDs are not appropriately defined or are not operating effectively in practice.

In addition, within the superannuation system, trustees are required to formulate and give effect to an investment strategy that has regard to diversification and risk, including the risk of inadequate diversification under *section 52B(2)(f)(ii) of the Superannuation Industry (Supervision) Act 1993*.

Broad restrictions could have significant unintended consequences, including reduced product choice, constrained innovation, and reduced capital formation. They may also create inequitable outcomes by limiting retail investors' access to legitimate higher-risk, higher-growth investment opportunities that remain available to wholesale investors, potentially widening wealth inequality over time. In addition, where retail investors are unable to access these opportunities through legitimate and well-regulated structures, there is a risk they may seek exposure through less regulated channels, including direct investments in speculative assets or unlicensed schemes, increasing their vulnerability to scams and consumer harm.

International experience should be applied with caution, as jurisdictions such as the UK operate more prescriptive product regimes that differ materially from the Australian MIS framework.

**Question 29. Should certain schemes remain accessible to retail investors without restriction, while others require additional conditions or oversight?**

The FSC does not support restricting retail access to certain schemes based on asset classes or introducing a framework that differentiates access through prohibitions.

Retail investors should continue to have access to registered MISs, with regulatory settings focused on ensuring that products are appropriately designed, governed and distributed.

In the FSC's view, a more effective approach is to strengthen risk-based supervision, rather than introducing restrictions on access. ASIC should be supported to identify and focus on schemes that exhibit higher-risk characteristics, including those involving illiquidity, complexity, leverage, concentrated exposures or governance concerns.

This is consistent with the FSC's broader recommendations in relation to MIS reform, which emphasise the importance of improving ASIC's data collection and analytical capability to support earlier identification of higher-risk schemes and more targeted supervisory intervention.

A data-driven approach would enable ASIC to:

- better monitor emerging risks across the MIS sector;
- identify outliers and higher-risk structures in a timely manner; and
- direct supervisory and enforcement resources to where they are most needed.

This approach allows regulatory action to be targeted at the drivers of consumer harm, rather than applying blanket restrictions that may limit investor choice and reduce market efficiency.

The existing framework, including DDO, responsible entity duties and ASIC's enforcement powers, already provides a strong basis for managing distribution and product risk. Strengthening supervisory capability within this framework is therefore a more proportionate and effective response than restricting access to particular schemes.

**Recommendation 24:** The FSC recommends that ASIC strengthen its data collection and risk-based supervisory capability to identify and respond to higher-risk MISs, rather than restricting retail access to particular schemes.

**Question 30. What transition issues would MISs face if retail access to certain asset classes were restricted under an amended MIS framework, such as under the UK's frameworks?**

If retail access to certain asset classes were restricted, the transition challenges for existing MISs would be significant.

Responsible entities may need to cease accepting new retail investors, restructure products, establish parallel wholesale vehicles, and amend constitutions, disclosure documents and distribution arrangements. Portfolio repositioning may also be required, which could be difficult where assets are illiquid or long-dated.

There are also important investor fairness considerations. Existing retail investors should not be disadvantaged through forced asset sales or restructuring that could crystallise losses or reduce investment outcomes.

More broadly, restricting retail access could reduce the flow of capital to certain asset classes and sectors of the economy. In the Australian context, where MISs play an important role in capital formation, this could have unintended consequences, including reduced diversification opportunities for investors and increased use of less transparent or offshore structures.

The FSC does not support restricting retail access to a sub-section of MISs. Instead, the focus should be on ensuring the existing regulatory framework operates effectively in practice. This includes strengthening risk-based supervision and ensuring that existing safeguards, DDO, responsible entity duties and ASIC's enforcement powers are appropriately applied and enforced.

## 7. Proposal 4: Limit fee deductions for switching-related financial advice.

### 7.1. Limiting fee deductions

#### **Question 31. Would prohibiting fee deductions for switching-related advice meaningfully reduce harmful or inappropriate switching and improve member outcomes?**

The FSC fails to see the connection between prohibiting fee deductions for switching-related advice and the reduction in harmful or inappropriate switching, and therefore how member outcomes would necessarily improve as a result. Professional standards and legislation governing fee deductions already impose a very high bar relating to advice on superannuation rollovers (switching). We emphasise that professional financial advice that involves considering whether an individual's superannuation fund is right for their financial situation, objectives and needs is a legitimate and important consideration when providing holistic financial advice and must be done in the best interests of the member.

In Australia the cost of financial advice remains high, with access to advice from professional, trusted sources remaining out of reach for most Australians. Post-Royal Commission, a strong body of work has been established and policy reform approved to streamline and deregulate the financial advice delivery process under the Quality of Advice Review and subsequent Government response through the Delivering Better Financial Outcomes (DBFO) package. This has been undertaken on the basis that, whilst standards in the advice profession have lifted, regulatory red tape and compliance has stifled the profession and led advisers to exit in ever greater numbers. With DBFO yet to be fully realised, access to quality advice remains a considerable concern for consumers. Any prohibition on the deduction of advice fees would not only run counter to recent policy and legislative change to confirm the legitimacy of this practice, but it would be completely counterproductive to the policy aims of the Government for financial advice.

Prohibiting advice fees deductions for switching, or any other advice topic, would reduce access to advice by requiring members to pay out of pocket, as Treasury rightly identifies. The FSC considers this would impact members most who have the least ability to pay from their non-superannuation savings, removing an important financial choice for them and limiting their ability to proceed with advice on important retirement decisions. This will contribute to superannuation members not seeking advice, or instead looking for alternatives sources of advice and guidance in the unregulated parts of the market. This would lead to a deterioration in personal retirement outcomes for superannuation members and would be counterproductive to member outcomes. It is also likely to have the effect of a reduction in competition across superannuation funds, and fund types, in the sector as members become 'stuck' in under performing funds with poor service or funds that are not optimised for their particular financial objectives and needs.

This is not a niche issue. According to data provided by six of the largest superannuation platforms, almost one million Australians currently access financial advice by paying for that advice through their superannuation. Restricting this payment mechanism would materially reduce access to regulated advice for a significant cohort of members.

### *Switching advice*

Where financial advisers are involved in the decision for an individual to elect to change their superannuation fund, this advice must be provided, as with all personal advice, in the best interests of the client/member. This is a high standard which includes the need to do a thorough fact find into the client's relevant circumstances and to provide a statement of advice explaining the substance of the advice, and basis for the advice. In making an appropriate advice recommendation to switch funds, an adviser will need to make an assessment which compares the benefits and costs of the 'to' fund to the 'from' fund. This will consider things such as fees, performance, insurance, investment options available, availability and quality of retirement products, member service and overall functionality of the product. More broadly, advisers will also consider factors such as the integration of technology to deliver efficiencies to members, delivering cost savings. By definition, this is designed to, and should, deliver value to the member. In turn, the member has provided informed consent to the advice and the associated fee (see below) which may be deducted from their account in the receiving fund, including on an ongoing basis.

Where this product replacement and best interests assessment is not carried out sufficiently (such as what seems to have occurred in the isolated cases in Shield and First Guardian), this would be a breach of existing advice obligations. Where this is evident as part of a system of consistent breaches of the law, consumers would rightly expect regulatory surveillance to detect it, and act to stop it causing further harm.

### *Deduction of fees from superannuation accounts*

Banning advice fees from superannuation would also create practical challenges for trustees in discharging their governance and due diligence obligations. Where advice fees are paid from a member's superannuation account, trustees have visibility that personal financial advice has been provided in connection with the relevant transaction or product recommendation. This supports clearer allocation of regulatory responsibility between the trustee and the licensed adviser, who is subject to statutory best interests and appropriateness obligations.

Removing the ability to deduct advice fees from superannuation risks reducing transparency regarding whether personal advice has been provided to the member at all. Trustees may be required to assess member outcomes and transaction risks with less visibility of the role played by an adviser and with diminished ability to distinguish between advised and non advised conduct. This may complicate existing governance, monitoring, and member protection frameworks, while also creating uncertainty regarding the practical allocation of responsibility between trustees and financial advisers.

**Recommendation 25:** Prohibiting advice fee deductions from superannuation would deteriorate the fundamental right a member has to choose their own superannuation fund. It would greatly reduce access to quality, professional advice at a time when Australians would greatly benefit from more advice from trusted, regulated sources. There would also be a concerning reduction in competition within the superannuation sector which would likely distort the natural flow of members and funds under management compared to the counterfactual. This would ultimately impact the retirement outcomes of members.

**Question 32. Under Proposal 4, which option (or combination of options) would best reduce inappropriate switching while still allowing appropriate access to advice?**

Under proposal 4, depending on how it was implemented, only Option 4.2c may be appropriate to reduce inappropriate switching advice while still allowing appropriate access to advice, noting that this option would still be duplicative of existing obligations and have minimal benefit.

As already noted above, advice fee deductions for switching-related advice would reduce access to advice by requiring members to pay out of pocket, as Treasury rightly identifies. In limiting choice to pay, this would impact members most who have the least ability to pay for advice from their non-superannuation savings and therefore limit their ability to proceed with advice on important retirement decisions. This will lead to superannuation members not seeking advice, and/or they may look for alternatives sources of advice and guidance in the unregulated parts of the market to effect their right to choose a superannuation fund. Given the critical role of professional financial advice for members in the pre-retirement phase, personal retirement outcomes for superannuation members would deteriorate. This would be counterproductive for members and the broader sector.

This payment mechanism is already relied upon at scale. Data provided by six of the largest superannuation platforms indicates that almost one million Australians currently access advice by paying through their superannuation, demonstrating the importance of preserving this mechanism as part of an accessible advice system.

In practice, if advice businesses can continue to provide switching-related advice following the introduction of the prohibition, they will need to consider fee increases across other advice services offered in conjunction with the advice, and/or with respect to other types of advice they offer. Again, this will not support increasing access to advice, nor will it address the conduct the proposal seeks to target .

FSC members observe it may also lead to a reduction in competition across superannuation funds and fund types in the sector. Oddly, whilst advice to switch would be prohibited from being paid for through superannuation, advice which recommends the member remain in their existing fund (advice to 'hold' their existing product following a product comparison analysis) could legitimately be deducted and paid for from superannuation. For these reasons option 4.1 and the targeted alternatives considered under Option 4.1a should not be contemplated.

Our high level concerns with the targeted alternatives discussed under Option 4.1a are outlined below:

*Prohibiting advice fee deductions from Platform RSEs*

This would rely on the introduction of a legislative definition of Platform RSE. The FSC does not support a definition of Platform RSE which singles out platforms as a distinct or higher-risk category or for the purpose of introducing legislative mechanisms and policy outcomes built on the basis that Platform RSEs are a distinct or higher risk category. We would therefore not support this alternative on that basis. As discussed above, prohibiting advice fee deductions in this manner, through the identification of a particular subset of funds, would only reduce competition in the superannuation sector.

*Prohibiting advice fee deductions for new members of the receiving fund (i.e. where the member does not already have an interest in a receiving fund) for a prescribed period:*

While we disagree with the overall premise of prohibiting advice fee deductions on switching there are some distinct limitations to the utility of this option. Prohibitions are generally blunt and ineffective legislative mechanisms which can lead to changes and adjustments in behaviour to manage the new conditions which are created following the introduction of the ban. Often they simply lead to a drag on productivity as businesses adjust arrangements. Treasury has not provided detail relating to the length of the prescribed period that would apply, however, it is expected superannuation trustees would need to introduce new operational processes and rules to monitor and manage this change, in addition to monitoring whether the member is or is not an existing member of the fund. This will lead to additional costs for all fund members. For their part advisers will need to consider how to restructure advice fee arrangements to comply with the new artificial timeframes and member rules. This will be a drain on fund and adviser productivity for no benefit.

*Prohibiting advice deductions based on age or balance thresholds:*

From an operational perspective this would be particularly burdensome for trustees to monitor and apply especially as a member's (industry wide) total superannuation balance would need to be taken into account to ensure the rules were not circumvented. In proposing this, the FSC assumes that Treasury means to attempt to protect lower balance members and older (more vulnerable) cohorts, thereby addressing perceived concerns about fees contributing to balance erosion. However, in doing so, the proposal will discriminate against particular cohorts of members, disallowing them the choice to pay for advice via their superannuation fund.

The FSC notes that, according to data provided to the FSC by the 7 largest platform providers,<sup>5</sup> those that are choosing to access superannuation platforms are typically:

1. older, with an average age of over 59 years old,
2. have higher balances, with an average new account balance<sup>6</sup> of \$349,500<sup>7</sup>

This is over \$100,000 more than the average balance of someone aged 55-59, across the APRA-regulated superannuation sector.<sup>8</sup>

Where a person is younger but choosing to use a superannuation balance, they are also higher balance with the average balance for newly established platform accounts (under 30) being \$54,800, almost three times higher than the APRA fund average of \$16,200 for the same age cohort.

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<sup>5</sup> Insignia, Macquarie, Colonial First State, BT, AMP, Hub 24, Netwealth

<sup>6</sup> Established FY24/25. Source: Platform provider data.

<sup>7</sup> All data points averaged as at 30 June 2025, for new accounts established FY 2024/25.

<sup>8</sup> APRA average reflects entities with more than six members. Source: APRA, Quarterly Superannuation Industry Publication (September 2025).

Further, the Platform data indicates that an average of 24.7% of new accumulation accounts receive more than one rollover contribution, suggesting many platform accounts are used to consolidate several existing superannuation balances into a single structure.

The FSC is also concerned about the proposed alternative because cohorts, such as those with lower balances are already less likely to be able to access professional financial advice on important matters such as choice of superannuation fund in the lead up to retirement, given the costs involved. The lack of access to advice means members may continue to consider sourcing information and advice from non-reputable and unlicensed sources, which may not be in their best interests.

#### Option 4.2a and b

A trustee's obligations relating to the monitoring of advice fee deductions are governed by section 99FA of the SIS Act and a trustee's general obligations including acting in member's best interests and complying with the sole purpose test. It must also be satisfied that ongoing fee arrangements and fee deductions comply with the relevant requirements of the Corporations Act. Section 99FA was amended in 2024 in conjunction with the DBFO Tranche 1 changes. However, it was confirmed beyond doubt that the existing effect of the section did not change and that existing guidance on trustee obligations in relation to reviewing advice, provided for the purposes of lawfully deducting advice fee on behalf of advisers, would continue to apply.<sup>9</sup> This guidance was provided by both regulators in a joint letter to trustees in 2021. In particular, the regulators stated "In order to have robust oversight practices trustees may need to incorporate random reviews of a sample of non-ongoing and ongoing advice documentation (i.e. SOAs, FDSs and written consents for fee deductions), taking into account relevant risk factors." And, importantly "Trustees are not expected to review individual pieces of advice for quality, value or appropriateness."<sup>10</sup>

This distinction is important. Superannuation trustees are generally not authorised to provide personal financial advice under their AFSL and are not equipped, either from an authorisation or expertise perspective, to assess whether switching-related advice is reasonable having regard to the nature and scope of the advice, the member's personal circumstances, or whether the fee is appropriate relative to the member's balance. Requiring trustees to make these assessments would risk blurring the boundary between trustee oversight and the provision of regulated personal financial advice.

Since the passage of the DBFO Tranche 1 legislation the FSC has developed both:

- guidance to assist trustees navigate the duties and obligations of trustees when paying out fees from a superannuation fund in the form of an *Information Sheet*; and
- an *FSC member Standard*<sup>11</sup> applying to Platform trustees which governs: the initial due diligence required prior to onboarding advice licensees and advisers onto a

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<sup>9</sup> DBFO T1 EM

<sup>10</sup> Joint letter June 2021

<sup>11</sup> FSC Standard 31; paragraph 5

platform; ongoing monitoring of licensees and advisers on the platform; and oversight over advice fee deductions. FSC platform members must attest to this standard. Importantly, the standard instructs platform trustees the how they can confirm compliance with section 99FA and also contains better practice guidance on this point.

These artefacts, in particular the Standard go beyond the high level guidance provided by regulators and offer trustees meaningful approaches to monitoring fee flow patterns and adviser activity including on member accounts through risk indicators. They also provide suggested actions a trustee can take once identifying higher risk activity on an account.

The Standard effectively covers the field with respect to: appropriate review of advice fee deductions whether in respect of switching-related, or other, advice; and the consideration of appropriate fee caps on advice within a fund. Given the principles based nature of the law the FSC considers that it has now developed appropriate rules and guidance for trustees to follow as they consider how best to discharge their trustee duties in this area.

ASIC has also undertaken significant supervisory and enforcement activity in relation to advice fee deduction practices, including scrutiny of consent arrangements, trustee oversight processes and compliance with existing legal obligations relating to fee deductions from superannuation. This demonstrates that the existing framework already provides regulators with substantial tools to address misconduct and poor practices where they arise. The FSC therefore considers that stronger supervision and enforcement is a more proportionate response than imposing prescriptive fee caps or broad restrictions on switching-related advice fees.

The FSC does not support prescriptive or hard-coded requirements for the mandatory review of switching-related advice fee deductions, as this would add significant cost and operational complexity to existing trustee oversight processes for limited additional benefit.

Many trustees already implement fee caps across their products.

A trustee's approach to its obligations in relation to monitoring advice fee deductions (including the implementation of existing fee caps) is guided in large part by the profile of its membership. A superannuation fund where the overwhelming majority of members are advised, and who have relatively higher balances, is likely to have a different advice fee governance approach to a fund which has a very small number of advised members with low balances. These funds are likely to have different advice fee structures and will take different approaches to advice fee caps. This is entirely appropriate under the superannuation trustee legislation and regulatory model. To introduce a mandatory, explicit fee cap across all trustees could lead to homogeneity, leading to distortions to existing fee structures across the market. This is likely to result in a competitive disadvantage for some funds and advisers given there may be new limitations on existing legitimate advice fee practices which are entirely suitable for the member profile and needs in question.

FSC's Standard 31 considers the application of fee caps by trustees, including as part of the better practice guidance. In doing so it aims to provide appropriate guardrails whilst respecting the necessary flexibility trustees require when observing their obligations across their respective memberships. To prescribe mandatory fee cap obligations on advice fees

following a switch would have the effects described above as well as imposing additional operational complexity to for trustees managing this process.

#### Option 4.2c

This option is described as introducing clearer minimum expectations for adviser and licensee onboarding and monitoring in relation to switching related advice fee deductions, as a minimum standard. As discussed above the FSC has now produced a platform RSE member Standard, to which platforms must attest annually. The Standard covers trustee obligations with respect to switching (and other) advice. The FSC considers these requirements effectively cover off on the aims of option 4.2c meaning r the benefit of the introduction of legislative provisions to this effect would be minimal.

**Recommendation 26:** The FSC notes its Standard 31 covers the requirements in option 4.2c, which renders legislative implementation of option 4.2c of minimal benefit.

#### **Question 33. Should restrictions also be placed on advice fee deductions from SMSFs?**

The FSC does not support introducing restrictions on advice fee deductions as a means to address the root causes of the Shield and First Guardian collapses.

However, to the extent that restrictions are introduced they would need to be applied across all funds equally. To do otherwise, and apply restrictions or prohibitions on a subset of funds only, would have serious impacts on competition which would ultimately have a negative impact on member retirement outcomes. Restricting a member to paying for switching advice from one type of fund over another will effectively narrow a member's choice of retirement fund or vehicle. This will mean members who may be dissatisfied with their existing arrangement, or may be in a poor performing fund, are far less likely to be able to change their arrangements. Alternatively they may seek cheap or 'free' advice from an unregulated source, or act without advice, potentially delivering them a poor solution.

**Recommendation 27:** The FSC does not support introducing restrictions on advice fee deductions as a means to address the root causes of the Shield and First Guardian collapses. However, to the extent that restrictions are introduced (which we do not support) they would need to be applied across all funds equally.

#### **Question 34. What would be the impact on members' ability to exercise choice and access financial advice?**

Proposals that introduce additional restrictions or procedural requirements in relation to switching related financial advice are likely to have a material impact on customers' ability to exercise choice and access appropriate advice.

Access to financial advice in Australia remains constrained by cost, complexity, and limited adviser availability. Where members are required to pay for advice out of pocket, rather than through their superannuation account, this will act as a significant barrier, particularly for those with lower levels of liquid savings. As a result, such measures are likely to reduce the

number of members who seek professional, regulated advice when making important decisions about their superannuation.

Limiting access to advice in this way may have the unintended effect of weakening customers' ability to make informed choices. Decisions relating to switching superannuation funds typically involve complex considerations, including fees, investment performance, insurance arrangements, product features, and retirement outcomes. Professional advice plays a critical role in helping members navigate these factors and act in their best financial interests.

Restrictions that reduce access to advice may therefore result in members either remaining in unsuitable or underperforming products or alternatively seeking information and guidance from unregulated sources. Both outcomes carry risks of poorer long term financial outcomes and reduced confidence in the superannuation system.

In addition, constraints on switching related advice may have broader implications for competition within the superannuation sector. The ability of customers to obtain advice and act on that advice supports the efficient movement of funds and promotes competitive pressure on fees, performance, and service quality. Impeding this process may reduce competitive dynamics and limit incentives for funds to improve member outcomes.

While it is important to address instances of misconduct and inappropriate switching, the evidence outlined in the consultation paper indicates that these issues arose from failures in governance, conflicted arrangements, and oversight, rather than from the availability of advice itself. Measures that restrict access to advice risk addressing the symptoms rather than the underlying causes of harm.

Proposals that constrain access to switching related financial advice are likely to reduce members' ability to exercise informed choice, limit access to professional guidance, and weaken competitive outcomes across the superannuation system. A more effective approach would focus on strengthening the quality, oversight, and integrity of advice, while preserving members' ability to seek and act on that advice.

**Question 35. If advice fee deduction restrictions were based on a member's total superannuation balance or age, what thresholds would be appropriate?**

The FSC does not support age restrictions or balance thresholds applying to advice fee deductions. The cost of comprehensive advice is high (averaging over \$5,000 in many cases) and this has pushed it out of reach for the majority of Australians. To further reduce access to advice for certain cohorts of superannuation members, including for those who might need it most, is exactly the wrong direction for financial advice policy in Australia at the present time. On the contrary, policies to reduce the cost of advice through deregulation of the advice delivery process and expand the supply of advisers onto the market are needed urgently.

To restrict advice fee deductions based on a member's age is also similarly counter-productive to policy aim of increasing access to advice. The FSC assumes Treasury intends that this proposal would restrict access for late stage accumulating and pre-retiree superannuation members (approximately ages 50-65) with growing balances who may be

considering switching to a better performing fund (or a fund offering better services). Again, this is a cohort of members who should not be denied the choice to control their own retirement decisions. Denying them access to advice (through restricting the way they pay for it) is likely to negatively impact their retirement outcomes and overall well-being in many cases.

Further, data provided to the FSC by the seven largest platform providers<sup>12</sup> demonstrates that consumers accessing superannuation platforms are generally not inexperienced or disengaged members. Rather, they are typically older Australians with more substantial retirement savings who are actively making decisions about retirement planning and portfolio construction.

The data indicates that the average age of a new platform account holder is over 59 years old and the average new account balance is approximately \$349,500, which is more than \$100,000 higher than the average APRA regulated superannuation balance for Australians aged 55 to 59. This strongly suggests that platform users are predominantly pre-retirees and late stage accumulators seeking more tailored retirement strategies, precisely the cohort most likely to benefit from access to professional financial advice. Restricting advice fee deductions for these members based on age or balance thresholds would therefore disproportionately impact Australians approaching retirement, at the point where financial decisions become more complex and consequential.

Importantly, the data also indicates that younger members who access platform products tend to have materially higher balances than their peers. For members under 30 establishing new platform accounts, the average balance is approximately \$54,800, compared with an APRA sector average of approximately \$16,200 for that age cohort. This indicates that even younger consumers using these arrangements are generally more engaged and financially established than the broader population.

The platform data also shows that approximately 24.7 per cent of new accumulation accounts receive more than one rollover contribution, indicating that many consumers use platform structures to consolidate multiple existing superannuation accounts into a single arrangement. This is consistent with members seeking to improve oversight, efficiency and long-term retirement outcomes through consolidation and professional advice.

These data points do not support the proposition that broad age or balance-based restrictions are appropriately targeted safeguards. Rather, they suggest such restrictions would primarily reduce access to advice for members already engaging actively with their retirement planning and seeking legitimate assistance to manage increasingly complex financial decisions.

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<sup>12</sup> Insignia, Macquarie, Colonial First State, BT, AMP, Hub 24, Netwealth

As above, we also caution that these proposals will introduce additional complexity into the superannuation and advice ecosystem, meaning additional costs to administer and comply with the new rules.

**Recommendation 28:** The FSC does not support age restrictions or balance thresholds applying to advice fee deductions.

**Question 36. What existing barriers prevent funds from conducting stronger checks before allowing advice-fee deductions?**

As described above, given the principles-based nature of the overarching trustee obligations which apply to advice fee deductions, and the additional parameters defined in the FSC Standard, the checks and monitoring framework is currently set at a high level. To impose obligations that are too prescriptive on trustees or require specific approaches to certain situations will unnecessarily stifle compliance monitoring and business processes, adding cost and complexity. We urge Treasury to consider that there are effectively two ‘fiduciary’ gates here which need to operate efficiently and in concert: i) an adviser providing professional advice to a member under a legislated best interests obligation and adhering to a professional Code of Ethics; and ii) a trustee acting under codified duties relating to sole purpose and acting in the best financial interests. The strength of this framework is evident and it is abundantly clear to trustees the level to which they must operate to manage their obligations under the framework whilst respecting the role of the adviser and licensee.

In addition to this members, advisers and trustees and the public have the right to expect that effective regulatory supervision and monitoring of this legislative framework will be in place to ensure, where appropriate, serious risks in the system are identified and dealt with in a timely manner.

**Recommendation 29:** As described above, given the principles-based nature of the overarching trustee obligations which apply to advice fee deductions, and the additional parameters defined in the FSC Standard the checks and monitoring framework is currently set at an appropriate level.

**Question 37. How would this proposal interact with a waiting period for switching-related advice?**

If a mandatory waiting period were introduced (which the FSC does not support), its interaction with switching related financial advice would likely introduce complexity, duplication, and unintended consequences for customers, without delivering a commensurate improvement in consumer outcomes.

The existing financial advice framework already imposes robust obligations on advisers, including the requirement to act in the best interests of the client, to provide clear and comprehensive disclosure through a Statement of Advice, and to obtain informed consent prior to implementation. These requirements are designed to ensure that decisions to switch superannuation funds are considered, informed, and appropriately documented. In this

context, the introduction of a waiting period would operate alongside, rather than enhance, these safeguards.

A mandatory delay would also affect the timely implementation of advice. Switching recommendations are often made as part of a broader financial strategy that may involve portfolio adjustments, consolidation of accounts, or risk management considerations. Imposing a prescribed delay between advice and execution may disrupt this process and could lead to poorer outcomes where customers are unable to act at an appropriate time.

The interaction between a waiting period and any receiving fund review of switching-related advice also creates practical and legal uncertainty. If the waiting period applies before the rollover is completed, the receiving fund may not yet have established an account for the customer and the individual may not yet be a member of the fund. In those circumstances, the receiving trustee may not have a clear legal basis to request, inspect or assess personal advice documentation for a person with whom it does not yet have a trustee-member relationship. This also raises important privacy and consent considerations, particularly where sensitive personal and financial information is being provided to an entity before any formal legal relationship has been established. Conversely, if any review occurs only after the rollover has been completed and the member has joined the receiving fund, any concerns identified may arise too late to alter the switching outcome or prevent the transfer from occurring.

The consultation paper indicates that recent instances of consumer detriment arose from sustained patterns of conduct, including conflicted arrangements, inadequate oversight, and the use of pressure-based sales practices, rather than from rapid or impulsive decision making. As such, a waiting period would be unlikely to mitigate these risks in a meaningful way.

There is also a risk that additional process requirements may discourage engagement with regulated advice channels or delay legitimate decision making. In some cases, this may result in customers failing to act on appropriate advice or seeking alternative sources of guidance outside the regulated framework.

The interaction between a mandatory waiting period and switching related financial advice would introduce additional friction and complexity, while duplicating existing protections and failing to address the primary drivers of consumer harm. More targeted measures focused on regulator oversight of governance and the management of conflicts are likely to be more effective in improving member outcomes.

## **8. Proposal 5: Requiring Platform Trustees to compensate members for eligible losses**

### **8.1. Funding of member compensation**

The policy response to Shield and First Guardian should prioritise addressing the upstream drivers of consumer harm, including the role of lead generation practices and the regulatory settings and supervision of managed investment schemes. Strengthening oversight and accountability at these earlier stages is critical to reducing the incidence and scale of losses and should be progressed as a priority.

Notwithstanding this, the FSC acknowledges that there is merit in considering introducing a codified compensation mechanism as part of a targeted package of reforms, provided it is carefully designed and does not displace the need for upstream intervention. As noted above, the FSC considers this proposal to work together with other targeted proposals which reduce the risk in the system to consumers at each point in the value chain. This proposal works as a last resort backstop to ensure superannuation consumers are not left destitute. The FSC submits that any new compensation obligation should be confined to the following parameters:

Firstly, rather than creating a new compensation regime specific to “platform trustees” as contemplated by the consultation paper, any such mechanism should be applied on a sector-neutral and functional basis. That is, the obligation should attach to the nature of the product or investment option - for example, where the trustee provides a broad, member-directed investment menu with access to externally managed investments.

Secondly, any new compensation regime must not operate as a de facto guarantee against all investment losses, including those arising from market movements or criminal conduct such as theft or fraud. Where trustees have undertaken appropriate due diligence and monitoring in line with their obligations, and losses arise solely from external fraud, a safe harbour should apply such that these losses are not eligible for compensation through the trustee. However, where a failure of investment governance has contributed to member losses, including in conjunction with fraud, a mechanism could be considered to require trustees to compensate members from their available capital.

Thirdly, there should not be a new obligation for trustees to hold a prescriptive pool of capital to remediate consumers in the event of an ‘eligible loss’ occurring. Rather, there should be a principles-based obligation that trustees can demonstrate they have access to the capital required in the event of an eligible loss. Or where trustees can’t demonstrate access to capital, they could then be required to hold additional capital. The FSC would be open to engaging further with Treasury on how an appropriate quantum of capital is determined. One way this could be done is through having the obligation to have access to capital in the primary law, and empower ASIC or APRA to work with entities to determine a quantum on a risk basis

Finally, any new compensation framework should include a mechanism for the relevant regulator to determine eligibility and apportion or cap compensation, rather than creating an open-ended liability for the trustee. The FSC also considers that ASIC would be the appropriate body to make such determinations, given its role in investigating misconduct

across the value chain, with appropriate rights of review or appeal for trustees. Given the significance of these determinations and the potential financial impact on trustees, procedural fairness requires that trustees have the ability to appeal the determination and seek independent review. At the same time, the framework should preserve flexibility for trustees to provide timely remediation to affected consumers where liability is reasonably clear, including through negotiated outcomes with ASIC where appropriate, rather than requiring all matters to proceed through a lengthy formal determination process before compensation can be paid. ASIC should then be empowered to ratify the compensation outcome where the trustee takes the initiative to provide compensation.

**Recommendation 30:** that Treasury prioritise reforms that address the upstream drivers of consumer harm, including strengthening oversight of lead generation practices and the regulatory framework for managed investment schemes.

To the extent that a codified compensation mechanism is progressed as part of a broader reform package, it should be carefully calibrated and limited in scope. In particular, any such mechanism should:

- apply on a sector-neutral and functional basis, rather than being targeted at “platform trustees” as a distinct category;
- be confined to defined “eligible losses” that are connected to investment governance failures, with a safe harbour where trustees have met their due diligence and monitoring obligations and losses arise solely from external fraud or misconduct;
- avoid prescriptive capital requirements, instead adopting a principles-based approach to ensuring trustees have access to sufficient financial resources; and
- include a regulator-led mechanism (preferably ASIC) to determine eligibility and apportion or cap compensation, supported by appropriate rights of independent review.

**Question 38. Do you consider existing pathways for members to seek redress for financial losses are overly complex and not fit for purpose?**

The FSC acknowledges that, from a consumer perspective, the existing avenues for seeking redress outside of litigation such as internal dispute resolution, AFCA, and (in limited circumstances) the CSLR can be complex to navigate, particularly where losses arise across multiple entities in the value chain.

However, this complexity largely reflects the structure of the system itself, where different entities perform distinct roles and are subject to different legal obligations. It does not necessarily follow that additional redress pathways are required. Introducing new mechanisms risks further fragmentation, duplication and uncertainty, particularly where liability for loss is already difficult to attribute.

That said, to the extent Treasury is considering a trustee compensation mechanism, one potential benefit is that it may provide a more direct and timely pathway for compensation in

circumstances where consumer losses have arisen as a combined result of external fraud or theft and failures of investment governance. This may compare favourably to existing recovery mechanisms under Part 23, which are more narrowly confined to cases involving a substantial diminution of fund assets due to fraud and can be complex and time-consuming to activate.

In the FSC's view, the policy priority should be to improve the effectiveness and clarity of existing pathways, rather than creating new ones. This could include:

- improving transparency and guidance for consumers on how to access existing redress mechanisms;
- strengthening coordination between regulators and dispute resolution bodies where multiple parties are involved; and
- addressing the upstream drivers of harm, including misconduct in lead generation and weaknesses in the managed investment schemes regulatory framework, to reduce the incidence of loss in the first place.

Taken together, these measures would better support consumer outcomes without adding further complexity to the redress framework.

**Recommendation 31:** that Treasury prioritise improving the clarity, accessibility and coordination of existing mechanisms, including internal dispute resolution, AFCA and the CSLR, while progressing reforms to address the upstream drivers of consumer harm.

### **Question 39. Should the requirement to compensate members from trustee capital be pre or post funded?**

The FSC's view is that any requirement for trustees to compensate members from trustee capital should be post-funded. This post-funded approach should require trustees to ensure they have appropriate access to sufficient financial resources to stand behind their investment governance processes, without mandating how that capital is structured or held.

In practice, many trustees within scope would have access to shareholder capital or other financial resources, which could be drawn upon if such an event were to arise. This approach avoids the need for a "dead pool" of capital, while still ensuring that trustees are appropriately accountable.

**Recommendation 32:** that any compensation requirement be post-funded, supported by a principles-based expectation that trustees maintain access to sufficient capital to stand behind their investment governance processes in the event of an eligible loss.

**Question 40. If a pre-funded requirement were adopted, should it be principles-based (adequate capital to fund compensation) or prescriptive (a minimum amount, for example linked to funds under management or another exposure measure)?**

If a pre-funded requirement were introduced, it should be principles-based, allowing trustees, potentially working with the regulator, to determine what constitutes adequate capital having regard to the nature, scale and complexity of their investment offering, including the extent to which they provide access to externally managed investment options. Trustees should not be required to hold a prescriptive pool of quarantined capital. Rather, there should be an obligation for trustees to demonstrate that they have access to sufficient capital in the event of an eligible loss. Where a trustee cannot demonstrate access to sufficient capital, they could then be required to hold additional capital.

The FSC would be open to engaging further with Treasury on how an appropriate quantum of capital should be determined. One approach could be to include the overarching obligation to maintain access to adequate capital in the primary law, while empowering ASIC or APRA to work with entities to determine an appropriate quantum on a risk basis, noting FSC commentary above about the multi-faceted nature of risk.

## **8.2. Eligible loss**

**Question 41. What criteria and evidentiary threshold should apply to determine that a loss is attributable to external fraud or theft and therefore an “eligible loss”?**

An eligible loss should be defined narrowly and supported by a clear evidentiary threshold to ensure that the framework does not operate as a de facto guarantee against all investment losses, particularly those arising solely from external fraud or criminal conduct.

An eligible loss should be required to satisfy the following criteria:

- There must be a direct and demonstrable link between the loss and a failure of the trustee’s investment governance obligations (e.g. deficiencies in investment onboarding due diligence or ongoing monitoring), rather than the loss arising solely from external fraud, theft, or market movements.
- Where the trustee has fully complied with its investment governance obligations, a safe harbour should apply, and the loss should not be eligible.
- A finding that a loss is “eligible” should be made by ASIC based on a robust evidentiary standard, including consideration of the trustee’s processes, documentation and decision-making at the time.
- The loss should be material in nature, and it should be reasonable in the circumstances to attribute responsibility to the trustee, taking into account the information available to the trustee at the time.
- Losses arising from ordinary investment risk, market volatility, or member/adviser-driven asset allocation decisions should be explicitly excluded from eligibility.

This approach ensures that compensation is targeted to instances of evidence-based trustee governance failures, rather than a de facto guarantee against all investment losses.

**Recommendation 33:** that “eligible loss” be defined by reference to a demonstrable failure of trustee investment governance, with a safe harbour for losses arising solely from external fraud or theft where the trustee has met its obligations, and with determinations made by ASIC based on a clear evidentiary standard.

### 8.3. Activation

#### **Question 42. Which independent body would you consider to be most appropriate for determining that an eligible loss event has occurred?**

As expressed above, the FSC considers that ASIC would be the best-positioned independent body to make a determination that an eligible loss event has occurred. This determination should involve assessing whether there has been a failure of investment governance obligations and establishing a causal link between that failure and member losses. This is inherently a regulatory and forensic exercise, requiring detailed analysis of trustee processes, decision-making, and compliance with legal obligations. As the conduct regulator, ASIC has both the mandate and the investigatory powers to undertake this type of assessment, including the ability to compel information and consider conduct across the value chain. ASIC is also better positioned to take a system-wide view, identifying whether issues reflect isolated incidents or broader governance failings, which should support more appropriate and proportionate outcomes.

While ASIC should be appointed as the regulator responsible for determining whether an eligible loss has occurred, trustees should also have the right to appeal the determination and seek independent review.

**Recommendation 34:** that ASIC be appointed as the independent body tasked to make a determination that an eligible loss event has occurred. This should be coupled with a right for trustees to appeal the determination and seek independent review.

#### **Question 43. How should this new mechanism work alongside existing compensation pathways such as trustee remediation, ORFR, AFCA/CSLR and Part 23 assistance?**

Any new compensation mechanism should operate within a clearly defined hierarchy of existing pathways to avoid duplication and over-compensation.

Smaller-scale or individual losses should continue to be addressed through existing mechanisms, including internal dispute resolution (IDR) and external dispute resolution (AFCA). These pathways are well-established, accessible to consumers, and designed to efficiently resolve individual complaints.

Trustee-led remediation should also remain the primary avenue where losses arise from identifiable failures in governance or processes. Where appropriate, trustees should remediate affected members directly in a timely and targeted manner.

Any new compensation mechanism should operate as a backstop of last resort, rather than a parallel or alternative pathway. It should only be engaged where:

- existing mechanisms have been exhausted or are unavailable; and
- there remains a clearly defined “eligible loss” that has not been otherwise remediated.

This does not preclude trustees from providing timely remediation to affected consumers in the first instance where liability is reasonably clear. As expressed above, one benefit of the proposed new mechanism is that it may provide a more direct and timely pathway for compensation than Part 23 in circumstances where consumer losses have arisen as a combined result of external fraud or theft and failures of investment governance.

Finally, where a member has been fully compensated through trustee remediation, they should not be eligible to access additional compensation through the CSLR. Clear rules should be established to ensure appropriate offsets and coordination between schemes.

**Recommendation 35:** that any new compensation should operate as a last-resort backstop within a clear hierarchy of existing pathways. IDR, AFCA and trustee-led remediation should remain the primary avenues for resolving losses, with the new mechanism only engaged where these have been exhausted.

#### 8.4. Determining compensation

##### **Question 44. How should compensation be determined?**

Compensation should be determined by reference to actual capital losses suffered by members (that is, the initial capital invested less any benefits received), rather than through a counterfactual methodology. Approaches that seek to estimate “what would have occurred” in alternative scenarios introduce significant subjectivity, and risk expanding compensation beyond the direct loss attributable to the relevant failure. A focus on actual losses provides a clear, objective and administrable basis for compensation, and is more consistent with a targeted framework that addresses genuine harm without creating unintended windfalls.

Any framework should also include a mechanism for the relevant regulator to determine eligibility and apportion or cap compensation, rather than creating an open-ended liability for the trustee. This is important to ensure that compensation is proportionate to the extent of the trustee’s contribution to the loss, particularly in cases involving multiple contributing factors (such as fraud and inappropriate advice alongside governance failures).

**Recommendation 36:** that compensation be limited to actual capital losses, and that any framework include a mechanism for the relevant regulator to determine eligibility and apportion or cap compensation, ensuring outcomes are proportionate to the extent of the trustee’s contribution to the loss and do not create open-ended liability.

## 8.5. Interaction with existing redress mechanisms

### **Question 45. What changes should be made to existing redress mechanisms if this proposal is implemented?**

In the event that trustees are required to demonstrate access to, or hold a pool of capital for the purposes of this compensation model, then those same trustees should not also be called upon to fund the CSLR special levy, or at a minimum should receive a proportionate reduction in any levy obligation. Doing so would create a duplicative funding burden and risk effectively requiring industry to compensate the same conduct twice through parallel mechanisms.

In addition, proposal #1 in Treasury's consultation paper on the [Compensation Scheme of Last Resort \(CSLR\): Reform options to support ongoing sustainability](#) contemplates enabling the CSLR to deduct all relevant amounts that a claimant may receive in connection with the matters covered by an AFCA determination.

The FSC is strongly supportive of this proposal and recommends that these "relevant amounts" expressly include any remediation or compensation already provided by a trustee - whether voluntarily, through a regulator-directed remediation process, or pursuant to any prospective trustee compensation mechanism. This would help avoid double recovery by claimants and ensure compensation arrangements operate in a coordinated and sustainable manner.

**Recommendation 37:** Where trustees are required to hold or maintain access to capital for the purposes of a trustee compensation mechanism, they should either be exempt from CSLR special levies relating to the same underlying conduct or receive a proportionate reduction in levy obligations.

**Recommendation 38:** The CSLR framework should expressly require any trustee-provided remediation or compensation (whether voluntary, regulator-directed or provided pursuant to a trustee compensation mechanism) to be treated as a "relevant offset" and deducted from any CSLR payment in order to avoid double recovery and ensure compensation arrangements operate in a coordinated and sustainable manner.

## 8.6. Alternative compensation proposals

### **Question 46. Would providing ASIC with a power to direct trustees to commence remediation processes provide an effective avenue to redress to members?**

Providing ASIC with a power to direct trustees to commence a remediation process could be explored as part of the broader reform package, particularly as a mechanism to enable more timely responses to suspected misconduct without waiting for final court outcomes.

However, the effectiveness of such a power would depend critically on its design and the safeguards that accompany it. In particular, given the potential scale and financial impact of remediation exercises, it is essential that trustees are afforded appropriate procedural

protections. This should include the ability to seek review or appeal of a determination, particularly where there is disagreement as to whether a contravention has occurred, the extent of member loss, or the trustee's responsibility for that loss.

**Recommendation 39:** that Treasury may explore providing ASIC with a power to direct trustees to commence remediation processes, subject to appropriate safeguards. This should include rights to independent review or appeal.