

29 June 2012

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AIST response to MySuper Consultation Package

Dear Mr Grummitt,

AIST would like to comment on the MySuper consultation package issued by APRA. Our response is provided in three parts:

- A. Discussion Paper - MySuper authorisation and transition standard**
- B. Application Form and Instruction Guide - Authority to offer a MySuper product**
- C. Draft Prudential Standard *SPS 410 MySuper Transition***

The Australian Institute of Superannuation Trustees (AIST) is an independent, not-for-profit professional body whose mission is to protect the interests of Australia's \$450 billion not-for-profit superannuation sector. AIST's members are the trustee directors and staff of industry, corporate and public-sector superannuation funds, who manage the superannuation accounts of two-thirds of the Australian workforce.

Our commentary is aimed at ensuring that clear, detailed and consistent information is provided by APRA to RSE licensees preparing to offer a MySuper product, and that the MySuper regime is implemented in a way that stays true to the key policy objectives of simplicity, transparency, comparability and accountability.

AIST has made many submissions on all aspects of the Stronger Super package of reforms, and seeks a meeting in the near future to discuss these comments with APRA.

A. Discussion Paper - MySuper authorisation and transition standard

Chapter 2 – Authorisation framework

2.1 – The approved form

AIST's comments on the approved form are set out in section B. Some comments are duplicated as AIST is responding to each of the documents in turn.

2.2 – Draft applications

The discussion paper notes that licensees will be able to submit draft applications to APRA. However, an application should not be given lesser priority by APRA where a licensee has not submitted a draft application for APRA's preliminary consideration and comment. It is not known if this is APRA's intention, but if APRA does intend to give priority treatment to licensees that have submitted drafts, then this should be made clear to all licensees by APRA at the earliest opportunity.

AIST submits that APRA should give priority to applications for generic MySuper products that have addressed all requirements of the application form. However, APRA should adopt a flexible approach to provision of the finally approved version of relevant policies, in the light of the tight timetable for the issuing of Prudential Standards. APRA should allow licensees to provide copies of policies and strategies in the application that have been approved by the licensees on an "in principle" basis, or on the basis of officer-level or Board committee approval. Provision of policies and strategies on this basis in the application should not result in an application being treated with any lower priority by APRA.

The uncertainty and possibility of change is confirmed by the following answer to a Frequently Asked-Question (FAQ) on the APRA website:

"Entities can submit draft applications to APRA at any time. However, given the form and details required to be provided may change as a result of consultation, entities may prefer to wait until the requirements are finalised (September 2012)."

As a general rule, APRA should also discourage licensees from providing extraneous material, and material that is not ordered in a manner consistent with the application form.

2.4 - Matters to be taken into account

If there are other matters that APRA takes into account in determining if a licensee is likely to comply with the enhanced trustee obligations for MySuper, then APRA should be obligated to bring these to the attention of all licences. This is necessary to provide certainty to licensees and to ensure consistent application across the industry.

Where a licensee's prior conduct is taken into account by APRA, there should be an obligation upon APRA to provide written reasons to the licensee, and for these reasons to be made on an objective basis. The licensee should then be given the opportunity to respond in writing, and the whole process should have prescribed and limited period.

Given the tight timelines for implementation of MySuper, APRA should be required to advise all licensees at the earliest opportunity (and prior to the commencement of the authorisation process) whether or not they intend to raise any prior conduct matters during the course of the application process.

2.5 – Sequence of assessment

AIST supports APRA's intention to assess a licensee's application for a generic MySuper product prior to consideration of that licensee's other MySuper applications. However, AIST submits that this should be expanded to provide that *all* applications for generic MySuper products be given priority over applications for other MySuper products, and that all applications otherwise be considered on a first-come, first-served basis.

Chapter 3- Transition to MySuper

Treatment of accrued default amounts

AIST supports APRA's expectation that the movement of accrued default amounts should occur at the earliest opportunity, but submits that this should be supported by further explanation along the lines that a delay may not be in a member's best interests.

A licensee's annual assessment of scale should also be required to address the scale implications of maintaining accrued default balances separate from a MySuper product.

In order to ensure compliance with this requirement, and in circumstances where a licensee delays the transition of accrued default balances to a MySuper product for more than 6 months after obtaining authorisation, a licensee should be required to sign a statement that is in the best financial interests of member.

Such a requirement is consistent with the additional criteria upon licensees who do not just re-name their existing default option as their MySuper product (see paragraphs 4 and 8 of the proposed prudential standard on MySuper Transition (SPS410)).

It is unclear why APRA proposes that a licensee delaying the transition of accrued balances has until 30 June 2016 to nominate a suitable MySuper product for fund members: That is, three years from the start date for MySuper products. AIST submits that this should be done no later than 1 July 2013 – by one year from the commencement of MySuper – in order to provide earlier certainty for affected fund members as to the ongoing treatment of their superannuation benefit.

Making this a requirement by 1 July 2013 is also consistent with paragraphs 7 and 8(a) of the proposed prudential standard *SPS410 MySuper Transition* (SPS410).

The discussion paper raises the possibility of consultation on a further prudential standard to address the treatment of accrued default amounts, and notes that this may be impacted by further tranches of MySuper legislation beyond tranches 1 and 2.

It is not clear if APRA is referring to tranche 3 of Further MySuper Measures and Transparency Obligations – which has been subject to a public consultation draft – or tranche 4 which is slated to deal with consequential matter – and has not yet been released for comment. In any event, the absence of clarity around this creates uncertainty, and does not assist licensee planning processes.

Transition plan

The proposed Prudential Standard on MySuper Transition (SPS410) contains detailed requirements for the content of transition plans. It would be useful if these requirements could be unpacked in further commentary from APRA about transition.

Notification

In absence of further guidance on notification, ASIC Information Sheet 90 (“As a superannuation trustee, do I need to notify members about member transfers without consent?”) would apply to MySuper transition. The discussion paper alludes to enhanced requirements during the transition period, with the options understood to be:

- a. An updated ASIC Information Sheet 90;
- b. A new and specific ASIC Information Sheet addressing disclosure requirements around transition to MySuper; or
- c. Regulations specifying disclosure requirements.

AIST prefers the option of specific and detailed guidance being provided by ASIC, such as a new Information Sheet.

AIST submits that funds should be able to confidently build disclosure into their MySuper transition plan.

In most cases, we anticipate that not-for-profit funds will effectively create their MySuper product by renaming their existing default option, and submit that this only requires simple and straightforward disclosure.

A super fund transitioning on this basis should be able to meet their notification requirements by advising members of the fund’s intention to seek MySuper authorisation in early 2013, by explaining the transition process for accrued default balance and advising that contributions made post-authorisation will be allocated to the fund’s MySuper product. This notification could

be provided in a letter or a prominently located article in a member magazine sent to members with their half-yearly record of contributions (i.e., for the 6 months to 31 December 2012).

Where a fund proposes (for example) delayed transition of accrued default balances into MySuper or the establishment of a MySuper product with higher fees than an existing default product, there can and should be much greater disclosure requirements.

However, regardless of the final details, licensees require certainty as to disclosure requirements at the earliest opportunity, and alignment between APRA and ASIC requirements. The current lack of detail about these requirements is an obstacle to licensee planning for MySuper implementation.

3.1 Data collection

The discussion paper notes that some of the same information collected on the application form will also be collected through the new mandatory reporting requirements to APRA. APRA should try to ensure that the provision of duplicated information is avoided as far as possible.

B. Application Form and Instruction Guide - Authority to offer a MySuper product

Part A – Details of the Applicant and general information

Item A7 – name(s) of MySuper product

Permissible 'white-labelling' arrangements and the range of their application need to be clarified to provide certainty to licensees and to ensure consistent application across the industry.

While the Instruction Guide states that a 'white-labelled' MySuper is only a renamed subset of a generic subset and "does not permit any variation in the features of the underlying MySuper product...", employer-based variations in administration fees and insurance premiums are permitted. It should be made clear that permitted administration fee variations are required to be associated with administrative efficiencies so as to ensure that there are no cross-subsidies. These efficiencies could be associated with scale or with better-working arrangements between the super fund and a specific employer.

There should be a requirement for each MySuper to be identified as such, that is, a higher requirement than a general expectation on APRA's part. The grounds for any exemption should be limited and available only on an exceptional circumstances basis applied on clear and consistent grounds, with reason for any exemption to be publicly given.

Item A9 – material goodwill provisions

Permissible authorisations under the material goodwill provisions and the range of their application need to be clarified to provide certainty to licensees and to ensure consistent application across the industry.

Item A10.2 – contingency plan

With respect to costs, the contingency plan for the wind-up of a large-employer MySuper product should do more than "address how the costs of the change will be borne." In the application, the licensee should formally agree that a wind-up would not result in any member of the fund, whether a member of the large-employer MySuper product or otherwise bearing any of the costs associated with the wind-up.

Part B.1 – Information required to assist APRA to determine whether the RSE licensee and its directors are likely to comply with their enhanced duties in relation to MySuper products

Item B1 – compliance with enhanced trustee duties

APRA should adopt a flexible approach to provision of relevant policies, in the light of the tight timetable for the issuing of prudential standards. Just as the application requires licensees to

provide copies of policies and strategies as if they were in effect, so APRA should allow licensees to provide copies of policies and strategies that have been approved by the licensees on an "in principle" basis, or on the basis of officer-level or Board committee approval. A licensee cannot be required to adopt the requirement of a prudential standard that does not yet exist, and which may change. The process should recognise and help resolve this conundrum, viz:

Trustees should be able to provide formal notification of approval within a reasonable period after the associated prudential standards coming into effect.

Item B1.4.1 – demographic information

Licensees will be required to provide product demographic information to APRA for this application under the new data collection requirements and to the ATO as part of the Member Contribution Statement. APRA and other Government agencies need to ensure that data is provided on a consistent basis, however, this will not occur without changes to announced requirements. For example, it currently appears that funds will be required to provide information about member ages on different bases.

The Instruction Guide is also unclear how a fund is supposed to substantiate whether "members are employed on a permanent, contract or casual basis, whether full time or part time basis, and the nature of the industry, trade or profession" of members. The level of required specificity is also unclear, as is the way in which APRA will ensure consistent application across the industry.

Item B1.4.2 – annual scale assessment

If it is assumed that scale benefits exist (as the legislation does), then the "determination as to the adequacy of the scale of assets" should also require that funds with scale benefits pass on these benefits have been passed on to members. Recent APRA research has demonstrated that this is not always the case.

If a fund has scale benefits but does not pass these onto members to the same extent as other MySuper products with which they are being compared, then they are not acting in the best interests of their members.

It would be a hollow requirement if the benefits of scale only have to be identified but not applied.

Similarly, the policy and procedures by which a licensee proposes to fulfil this obligation should also include the identification of measures to be taken in the event that its members are comparatively disadvantaged following application of the scale test.

Item B1.5 – MySuper transition

In order to ensure compliance with this requirement and in circumstances where a licensee delays the transition of accrued default balances to a MySuper product for more than 6 months

after obtaining authorisation, a licensee should be required to sign a statement that is in the best financial interests of their members.

Item B1.7 – other matters

If there are other matters that APRA takes into account in determining if a licensee is likely to comply with the enhanced trustee obligations for MySuper, then APRA should be obligated to bring these to the attention of all licences. Not only is this a matter of fairness, and removes the possible allegation of favouritism, but it is also good policy that good ideas should be communicated across the industry.

This will provide certainty to licensees and to ensure consistent application across the industry. APRA's "MySuper - Frequently Asked Questions" could be expanded to include updates about other matters taken into consideration.

Part B.2 – Information required to assist APRA to determine whether the RSE licensee is likely to comply with the fees rules in relation to MySuper products

Items B2.2 & 3

Licensees will be required to provide MySuper fee information for this application, and to also provide this information to APRA under the new data collection requirements. APRA needs to ensure that data is collected on a consistent basis.

Item B2.6 – allocation of costs between MySuper and Choice products

Permissible allocations of costs need to be clarified to provide certainty to licensees and to ensure consistent application across the industry. For example, APRA should make it clear in the Instruction Guide that advertising, promotions and otherwise marketing the benefits of the fund as a whole is legitimate reason sharing costs across all fund members. In that example, such expenditure may be aimed at growing the fund and providing greater scale efficiencies to be passed on to members, and so is in members' best financial interests.

Item B2.7 – operational risk financial requirements

APRA should adopt a flexible approach to operational risk financial requirements, in the light of the tight timetable for the issuing of Prudential Standards. Just as the application requires licensees to provide copies of policies and strategies as if they were in effect, so APRA should allow licensees to provide copies of policies and strategies that have been approved by the licensees on an "in principle" basis, or on the basis of officer-level or Board committee approval. In this way, trustees should be able to provide formal notification of approval within a reasonable period *after* the associated Prudential Standards coming into effect.

The guidance provided in the draft Prudential Standard is useful in proposing an initial indicative target of 0.25%. It is implied that SPS 114 will, in the first instance, include a number of expectations rather than minimum levels of operational risk financial requirements. The interim

nature of proposed SPS 114 should be made explicit, and this should be noted in the Instruction Guide.

Alternate Part B – material goodwill and large MySuper provisions

The provisions should be expanded by the inclusion of an attestation that:

- The process to allocate costs does not involve any cross-subsidisation between fund members who have benefits under these arrangements, and members who have benefits under any other part of the fund, be they in other MySuper or Choice arrangements; and
- The provisions will operate in the best financial interests of members, including in relation to the processes when a member leaves the employment of the large employer. That is, a licensee would be required to satisfy the best interest test if leaving employment with a large employer could result in the member being transferred to a MySuper product with higher fees.

Part C – Attestations

AIST has recommended that APRA should adopt a flexible approach to approval of final policies and strategies, in the light of the tight timetable for the issuing of prudential standards. If APRA allows licensees to provide documents approved on an "in principle" basis, or on the basis of officer-level or Board committee approval, then the attestation should be to the effect that a licensee will provide formal notification of approval within a reasonable period after the associated prudential standard(s) coming into effect.

C. Draft Prudential Standard *SPS 410 MySuper Transition*

Application

AIST generally supports the requirements on trustees prescribed by the Prudential Standard, including the different and lesser requirements applying to licensees who effectively re-name their existing default option as their MySuper product.

Transition plans

The proposed requirements for the content of transition plans in paragraphs 4 and 8 are detailed and it would be useful if these requirements could be unpacked in further commentary from APRA about transition plans.

Movement of accrued default amounts into a suitable MySuper product

Paragraph 16 and 17 prescribe notification requirements and reference significant event notification.

AIST submits that notification requirements be met by the approach sketched AIST in the earlier notification section of this document, and that the Prudential Standard be amended accordingly.

Adjustments and exclusions

Any adjustments or exclusions should be publicly disclosed.

If you have any further questions regarding this submission, please contact David Haynes, Project Director on (03) 8677 3800 or dhaynes@aist.asn.au.

Yours sincerely,

A handwritten signature in black ink that reads 'Fiona Reynolds'.

Fiona Reynolds
Chief Executive Officer