

Enhancing member protections in the superannuation system – Consultation

Submission by The Conexus Institute

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About The Conexus Institute

The Conexus Institute is an independent, not-for-profit research institution focused on improving retirement outcomes for Australian consumers. Philanthropically funded, the Institute is supported by the insights of a high-quality advisory board, who work on a pro-bono basis. The Institute adopts a research-for-impact model and frequently collaborates with researchers from academia, associations, and industry. Where possible research is made open source to assist industry and create transparency and accountability. Further information [here](#).

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About Geoff Warren

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***** The authors are willing and able to participate in further consultation. Please treat this as a public submission. *****

Summary

This submission is set out in two parts. The first part sets out our motivations, which are based on our research and experience of the superannuation system. These motivations help to inform our views, the second part of our submission.

These are some of the key points made in our submission:

1. The review needs to consider yesterday's failings and tomorrow's challenges, of which there are many. We expect the super and advice system to evolve significantly in the future.
2. We consider it important for this review to focus on activities which will reduce consumer exposures to the catastrophic losses relating to operational risk events. This requires a clear distinction between investment governance activities and investment research activities.
3. We think platform governance requirements are not well-defined by legislation and APRA, and we are pleased that the consultation is exploring a solution to improve this situation.
4. We think it is critical that the review formally maps out duties and responsibilities in an intermediated relationship amongst each party and considers the aggregate outcome, rather than make recommendations for one part of the system.
5. Holding limits are important and are already applied by many industry participants. If it were to be legislated or regulated a principles-based approach might work best.
6. In a similar vein investment due diligence is important, but it is a subjective area. A principles-based approach may work best.

Motivations underpinning our submission

This submission, along with related submissions¹, are founded on a collection of motivations detailed below that are based on our research and experience. We only briefly outline these motivations, but we are happy to discuss in further detail.

Motivation #1: Review needs to consider yesterday's failings and tomorrow's challenges

It is important that the review not only acknowledge and address past failings but also focus on the challenges which may lead to future failings.

A number of recent failings have resulted in substantial losses for consumers, large claims on the CSLR, and ultimately have been the catalyst for this series of consultations. These include:

1. Dixon Advisory and the US Masters Residential Property Fund (URF)
2. United Global Capital (UGC) and the Global Capital Property Fund (GCPF)
3. Shield Master Fund and First Guardian Master Fund

A few themes emerge from these episodes:

- Product failings, with sub-standard investments that destroyed value for investors mostly involving private assets.
- Failings in financial advice, with advisers not operating in best interest of their clients.

¹ The related submissions is '*Compensation Scheme of Last Resort (CSLR): Reform options to support ongoing sustainability*'.

- Lead generators in the cases of United, Shield and First Guardian.
- Failure of other potential ‘gate holders’ such as trustees and platforms to effectively address the risks to consumers, most notably in the case of Shield and First Guardian; and,
- Fraud being a factor in some cases, and possibly all episodes to a degree.

These failings reveal a systemic weakness in the mechanisms via which trusting consumers place their faith in key operators which collectively advise and manage their superannuation. The current set of reviews is important to reduce the possibility for these systemic weaknesses to manifest again.

There is a range of future challenges that may be the source of potential poor consumer outcomes in the future which should also be considered, including:

1. **Retirement** – Super fund offerings (including product, guidance and pathways) need to evolve sufficiently to support good member outcomes in retirement. Any policy changes should take care not to inhibit (and indeed support) the capacity of super funds to assist their members in retirement.
2. **Potential secular shift in preferences for more control and flexibility** – There are signs of individuals showing more interest in taking control over their own super. A possible evidence point seems to be the emergence of a younger member cohort opening SMSF’s with relatively low balances on an unadvised basis². Potential for such a shift could be linked to the rise of populism and distrust of institutions (whereby large superannuation funds are viewed as institutions), increased focus on super in policy, regulatory and media circles, and rising super balances as the system matures. The tax changes announced in the recent budget may also contribute to this trend by establishing super as a remaining bastion for tax-advantaged investment.
3. **Constrained number of financial advisers** – This is a well-known situation:
 - *Demand*: The number of people approaching retirement with super balances of reasonable size should increase the demand for financial advice.
 - *Supply*: Adviser numbers have fallen by around 45% from a peak of 29,000 to around 15,000 post the Financial Services Royal Commission. Three shifts are primarily responsible:
 - Mandatory education and exam standards
 - Banning of conflicted remuneration
 - Mass exit of major banks

Demand clearly exceeds supply. While anecdotally the return on equity of advice businesses is very high, the pathway to increased supply is slow and constrained (for various reasons).

How unmet advice demands are serviced remains unclear. Super fund trustees may meet some needs, largely related to interests in the super fund. Digital advice may develop in a way to help address the advice gap. However, in our view, comprehensive digital advice has not developed in a sufficiently ‘institutional’ (i.e. comprehensive and rigorous) manner, and nor is it clear that consumers will accept a purely digital offer for a comprehensive advice service. More informal sources of guidance may be utilised as a consequence, include AI, social media and input from family and friends.

4. **‘Democratisation’ of private assets** – The past failings listed above have a common thread of private assets. Meanwhile, a trend has been occurring towards greater availability and use of private assets within private wealth channels. It is entirely possible that private markets may grow at a faster rate than public markets in the future, and that the push to provide consumers with access to these markets will continue. This creates a range of challenges relating to operational risk, valuations, transparency, illiquidity and agency risks that can give rise to potential for poor consumer outcomes. We note ASIC’s significant review on this topic last year³.

² <https://smcaustralia.com/blogs/new-switching-behaviour-on-low-super-balances/>

³ <https://www.asic.gov.au/regulatory-resources/markets/public-and-private-markets/>

5. **AI** – There is a risk that the potential role of AI is being underestimated, noting that it can be an enabler of greater control and flexibility for individuals (i.e. the second challenge as listed above). The pace of advancements in AI capability and the ability of users to better utilise AI to assist with areas such as financial advice is stunning. Below are some examples of how prompt design can be used to access AI-generated guidance on a financial advice topic in a way that can circumvent constraints on advice provision imposed by the AI provider:

- Design an AI agent or a collection of AI agents to debate and discuss the financial questions being explored. Importantly these agents can be designed to take on personas, with prompts asking ‘what might a particular person or panel suggest?’. For example, an AI persona of a high-profile operator could be created by reading every piece of information they have published.
- There is nothing stopping parties providing the prompts, for instance via chat rooms or social forums, or running a seminar on how to utilise AI to help manage your finances. It is debatable whether there is anything legally stopping an AI personal consultant from assisting a person to set up a personal AI process by providing the prompts.

It is relevant to consider the nature of the potential losses posed by each of these future challenges, and how they may be impacted by policy changes. We broadly break loss potential into three categories:

- (A) Significant losses experienced by a large portion of the population.
- (B) Catastrophic losses experienced by a (likely) small portion of the population.
- (C) Potential for smaller, non-catastrophic slippage in outcomes experienced by large portion of the population.

It seems that the current set of consultations is most focused on minimising (B). We also think it is important to focus on the potential to reduce (C), as small losses borne by many can have significant economic impacts especially when compounded over many years.

Motivation #2: Framing of risk to consumer outcomes (for purpose of this consultation)

Risk can be defined in many different ways. For the purposes of this consultation, we define risk as the risk of investment losses. We set this out in the most basic way as possible in the diagram below.

Risk	Nature
1. Market risk	<ul style="list-style-type: none"> • Broad decline in markets • Systematic, i.e. beta • Exposure linked to asset allocation
2. Relative performance risk	<ul style="list-style-type: none"> • Individual investments perform poorly • Idiosyncratic • Exposure linked to selection of specific investments or managed funds
3. Operational risk	<ul style="list-style-type: none"> • Investment loss through operational failures, including: <ul style="list-style-type: none"> – Mispriced transaction pricing – Impacts from illiquidity – Excessive fees or charges – Fraud

We make the following observations:

1. **Market risk** – This risk stems from uncertainty over market outcomes. Market exposure can be estimated, diversified in portfolios and sized appropriately. In many cases it is rational for people to take high levels of market risk, as it is expected to deliver higher outcomes over a long period of

time. Market risk is the main avenue through which significant losses can be experienced by a large portion of the population⁴. A key issue in addressing market risk is misalignment between asset allocation and the investor's risk tolerance and risk capacity.

2. **Relative performance risk** – The extent to which it is appropriate for an investor to take on relative performance risk versus sticking to broad market exposures is highly debatable: the literature of contesting views on this topic could readily take us to the moon and back! The role for private assets is an important consideration, as investing in such assets requires accepting relative performance risk as they are typically unavailable in the form of broad market exposure. Managed appropriately through due diligence, portfolio construction and risk management, relative performance risk should not be a source of sizable loss. However, catastrophic loss can occur where a large percentage of assets are allocated to individual investments.
3. **Operational risk** – This risk can manifest in many forms, and in most cases should result in non-catastrophic slippage in outcomes. Fraud is the key avenue through which catastrophic loss may occur. Operational risk can evolve through time. In particular, often schemes are not set up to be fraudulent, but the passage of time may create a path that leads to fraudulent activities.

These risks all need to be understood, well-governed and supported by the availability of relevant information. This consultation is attempting to address certain elements of risks (2) and (3), specifically the selection and provision of individual investments (in particular managed funds) and potential for fraud.

Motivation #3: Future shape of superannuation system

Over the last four years our State of Super⁵ publication has documented some sizable changes in the super industry. A notable recent trend has been the increasing prominence of platform supers, which are attracting flows from both the profit-for-member and master trust sectors. A key driver is members who are approaching retirement with increasingly larger balances are seeking financial advice, with financial advisers switching them to a platform. We suspect that a secular shift in preferences for more control and flexibility (see Motivation #1, point 2) is also playing a role.

The super system has changed in many ways over multiple decades. Some notable changes include:

1. Increased prominence of super in the lifecycle of consumers due to participation at a higher level of Superannuation Guarantee from an earlier stage of life.
2. Growth of the system, which now stands at around \$4.5 trillion and plays a significant role in the financial system and has become the second largest household sector asset behind property⁶.
3. Changing industry composition, which has shifted from a defined benefit-based system available only to a small part of the population towards an industry that is:
 - Dominated by defined contribution funds that transfer risks to consumers.
 - Significant cohort of profit-for-member funds (a relatively unique feature to Australia).
 - Increasingly fewer funds due to significant consolidation in APRA-regulated funds; and,
 - Significant SMSFs sector, currently containing around a quarter of system assets and recently showing renewed growth in the number of funds.
4. Rise and fall in the number of advisers (see Motivation #1, point 3).
5. Significant changes to regulatory settings include:

⁴ See [Market exposure as a major source of systemic risk](#), The Conexus Institute, April 2026

⁵ <https://theconexusinstitute.org.au/wp-content/uploads/2026/02/State-of-Super-2026.pdf>

⁶ See [Systemic impacts of 'big super'](#), The Conexus Institute, January 2025.

- Transition from the Insurance and Superannuation Commission to a twin peaks model of APRA and ASIC, with both significantly increasing their attention to the super sector over time.
 - Significant role of the ATO as chief regulator for the SMSF sector; and,
 - Implementation of the bright-lines Your Future, Your Super performance test, which is influencing the approach to investment within the APRA-regulated sector.
6. Evolving investment models with many super funds having significant investment teams, complex investment programs, sizable direct internal management of assets, and in some cases offshore investment offices.
 7. Evolution of super platforms with a service offering targeted at adviser functionality and efficiency. Prominent features include:
 - Large and varied menu of investment choices.
 - A (non-super) wealth platform equivalent which enables an adviser to have a full and integrated view of the client's exposure, while reducing their administration load.
 - Separately managed account offerings, which enable effective updating of client portfolios and provide access to asset-based fees for adviser groups; and,
 - Individual tax structures which enable personalised management of tax situations, notably including around managing tax during the transition from accumulation to retirement.

We think the super system will continue to evolve, with some interesting possibilities to consider:

1. APRA-regulated super funds are likely to become more service-focused rather than largely product and investment-focused entities, especially as attention to the retirement phase increases where personalisation and guidance are more important to address differing member needs. This will pose governance and regulatory challenges.
2. Increased desire for control and flexibility among a cohort of the population (discussed under Motivation #1, point 2), which will pressure funds to adjust their operating models.
3. Technology and AI may be enabled to deliver more tailored services to members. Some of the potential of AI was discussed in Motivation #1 as point 5. The need to address cyber risk is also prominent.
4. Greater scrutiny of product suitability seems required, especially as super funds develop their retirement offerings, but it is difficult to say how this will evolve. While it is important that portfolios are suitable for the risk profile of the individual, this has historically been difficult to assess apart from cases where portfolios have been clearly unsuitable. Preference in retirement are even more problematic as they extend beyond willingness to accept investment risk to trade-offs around aspects such as accepting income and longevity risk, desired shape of income streams, and preference for flexible access to funds. A few issues are noteworthy:
 - Risk profiling is very difficult, and we are not enamoured with many of the processes in the industry. It involves a rational and a behavioural piece, education and investment assumptions.
 - Solicitation of preferences during retirement have barely been addressed.
 - We query the degree to which a one-product-fits-all approach can continue at large super funds (acknowledging the role of intra-fund advice services in providing some support).
 - Technology may enable scalable delivery of more personalised offerings.

Further changes to regulatory and policy frameworks seem highly likely to continue as the industry evolves. The challenge for policymakers is whether required policy adjustments can be made in anticipation of changes such as those listed above or will occur on a reactive and hence lagged basis.

In any event, the industry can be expected to adjust to any legal and regulatory changes that may come out of this set of reviews. The history of financial services constantly provides examples of models emerging which adjust to regulatory settings and prosper. SMA's are a good example, allowing advisers a more efficient and effective way to update client portfolios. (Although they also reflect a sector which is lightly regulated.) An important possibility is that imposing onerous regulations on super platforms may lead to advisers increasing the creation of SMSF's where responsibility rests

with the SMSF trustees (i.e. the individuals themselves) while implementing through IDPS (wealth platforms) that are regulated less onerously.

Motivation #4: Activities which lead to a quality portfolio

In this section we focus on the set of investment activities which, undertaken well, should result in a quality portfolio.

First of all, suitability of the portfolio to the member's risk profile is critical, noting this is addressed in Motivation #3. The following diagram outlines the basic set of activities:

Activity	Explanation
1. Overarching investment model	<ul style="list-style-type: none"> • Investment objectives • Risk definition and tolerance • Investment activities to focus on as value-add • Implementation model • Resourcing of investment operations
2. Portfolio construction	<ul style="list-style-type: none"> • Approach, e.g. SAA vs total portfolio approach • Systems and resourcing to support construction and maintenance of portfolios
3. Implementation	<p>Approach to aspects such as:</p> <ul style="list-style-type: none"> • Internal vs. outsourced management • Active vs. passive • Investment or manager selection • etc
4. Risk management	<ul style="list-style-type: none"> • Assessment and monitoring of risk given (1) – (3)
5. Ongoing review	<ul style="list-style-type: none"> • Review of all activities outlined in (1) – (4)

Below we apply this framework to a few existing models of how consumer portfolios are being implemented in practice. We also give consideration to the regulatory protections attached to different aspects. Note we consider the reality of how implementation actually occurs. For instance, even though all super funds are required to specify an investment strategy, when a consumer is invested via platform super it may actually be the adviser who creates the investment strategy for their client.

	Implementation Model			
	1. Implemented via MySuper default	2. Financial adviser, implemented via platform super	3. Financial adviser, SMSF implemented directly	4. SMSF, implemented directly
1. Overarching investment model	Implemented by super fund Reviewed by APRA	Adviser, within the offerings of the platform	Adviser	Individual
2. Portfolio construction	Implemented by fund APRA sets governance expectations	Adviser Possible platform holding limits	Adviser	Individual
3. Implementation	Implemented by super fund APRA may investigate outcomes YFYS test	Adviser Implemented via platforms services Likely outside YFYS test	Adviser	Individual
4. Risk management	Implemented by super fund APRA sets governance expectations and may review	Adviser Platform may offer risk management and reporting services	Adviser	Individual
5. Ongoing review	Implemented by super fund APRA sets governance expectations	Adviser APRA governance expectations for platform only partly relevant	Adviser	Individual

This may be a useful framework to help support the consultation process. Much of the emphasis of the consultation is on implementation model (2), and how this can be strengthened to improve member protections. This is quite appropriate, including attempting to discern where there was failure against existing requirements and where additional requirements would be beneficial, noting that the costs of any additional requirements will ultimately flow through to clients or members. The table above identifies pathways with fewer protections that we believe warrant closer attention, notably including (3) financial adviser, implemented directly and (4) SMSF, implemented directly.

Motivation #5: Distinction between investment governance and investment research

Appropriately framed investment governance can help to ensure that a strategy and process are put in place and that they are being followed. In the case of super funds (regardless of type) this would reduce the risk of being exposed to a fraud, for instance.

However, investment governance processes do not directly drive good investment outcomes but rather tend to limit downside risks. Good investment outcomes are a function of investment research. We hold a belief that strong investment research capabilities are likely to lead to better performance and perhaps outperformance over time but remains difficult to achieve and not guaranteed. Looking at this issue through the lens of advised models, we expect significant variability in outcomes to arise

from the differing quality of investment research capabilities, implementation models and resourcing across financial advice firms.

Some advice models implement through relationships with consultants and service providers such as multi-asset managers and managed fund rating houses. Some advice models may be built on internal research capabilities, which may be of variable quality. Some, such as Dixon, utilised internal investment management models. The Shield and First Guardian failures highlighted examples where some advice models placed additional reliance on the investment governance activities of platforms (where there were failures in both the initial and ongoing governance processes) and external consultants. In these cases, these advisers not only failed to deliver good investment performance for their clients, but they also exposed their clients to catastrophic loss.

Motivation #6: Some reflections on the Shield and First Guardian catastrophes

Shield and First Guardian were both managed investment schemes (MIS) which handled client monies in a fraudulent manner. They could be accessed via a super platform, an IDPS or directly.

The PDSs of both funds maintained that they offered diversified products with exposure to illiquid assets. The return targets of both funds, especially First Guardian, were generally higher than the return targets of most super funds with a similar level of growth asset exposure. There were signs of something awry, which should have been evident if closer scrutiny was paid.

A number of the platforms which provided access to Shield and First Guardian did not apply and implement position size limits. We believe that tight position size limits may well have significantly curtailed the fraudulent schemes because it would have taken a lot longer for the frauds to achieve scale.

Motivation #7: Platform governance requirements not well-defined by legislation and APRA

We have always held a view that *Superannuation Industry (Supervision) Act 1993 (SIS Act)* and the relevant APRA regulatory frameworks have been largely targeted towards non-platform super funds (i.e. industry funds and retail master trust offerings) rather than platform super funds, even if inadvertently. The language, assumptions and structural concerns throughout the relevant legislation and regulatory documents seem to presume a super fund that constructs, owns, and governs its own investment options and delivers them to a pooled membership base. This is not unexpected since the rise of platforms is a more recent phenomena, and the nature of legislation and policy is that it develops incrementally. We consider formalising the categorisation of super fund types (as proposed in the consultation paper) as a promising attempt to rectify this situation.

Below we offer reflections on the SIS Act and APRA's Investment Governance framework (SPS 530 and SPG 530), as one example of APRA's regulatory framework, in this light.

SIS Act

Section 52 of the SIS Act defines the duties and obligations of super fund trustees through statutory covenants. Trustees must act honestly, diligently, and invest according to a properly formulated investment strategy.

One specific aspect highlights the challenges faced by trustees of super platforms.

1. **Section 52(6)** requires the investment strategy to have regard to risk, return, diversification, liquidity, and the ability to discharge liabilities. However, a platform trustee does not determine what investment each member holds. Typically, this is determined by the member's adviser (or perhaps the member themselves). The trustee can promote the member's financial interests through menu curation, fee oversight, and governance of the onboarding and monitoring process. However, a platform trustee cannot directly optimise the member's portfolio.

APRA SPS 530 and SPG 530

The purpose of SPS 530 is to ensure that RSE licensees, consistent with their obligation to act in the best financial interests of beneficiaries, prudently select, manage and monitor investments. The investment governance framework must include investment strategies for the whole of each RSE, and for each investment option. SPS 530 is principles-based rather than prescriptive, recognising that investment arrangements have varying complexity and that investment operating models differ across the industry. The standard addresses seven core obligations: investment objectives, due diligence, performance monitoring, strategy review, stress testing, liquidity management, and valuation governance.

Additional challenges exist for super platforms with respect to SPS/SPG 530, which add to the issues outlined above in respect to the SIS Act requirements. These issues relate to a platform facilitating bespoke portfolio solutions that are designed by an adviser, in particular:

1. Performance monitoring
2. Liquidity stress-testing
3. Stress testing

We are not advocating for platforms to have reduced standards. Rather, we are simply identifying that the obligations match better to an industry fund or corporate master trust and do not fit as naturally to a platform where advisers are acting as an intermediary that is overseeing investment strategy.

Motivation #8: APRA, the YFYS performance test, and relevant connections to this consultation

A consultation is also currently being undertaken on the YFYS performance test⁷. It is well-acknowledged that the YFYS test has benefits and detractions and is intensely debated. In announcing the review Treasurer Jim Chalmers identified three design principles⁸:

“First, any change to the performance test must uphold member outcomes as the core purpose of the test. Secondly, changes must maintain an objective standard or benchmark for fund performance. And third, any changes must be enduring to set the test up for long-term stability”.

We have always held the view that a single metric is an ineffective approach to assessing product performance. As an aside it would not have protected victims of Shield and First Guardian because: (a) the product track records were not long enough to qualify for testing, and (b) the funds were acting fraudulently so stated performance would not have been accurate.

Our working view is that a more appropriate model would be a more empowered and resourced APRA. We mention this as additional APRA resourcing may also assist with greater oversight of fund offerings.

Motivation #9: Sources of poor outcomes from financial advice

Large product-specific losses, including frauds, have resulted in poor outcomes for some advised consumers and associated headlines. However, other advice failings appear to have led to poor outcomes for some consumers, including:

1. SMSF establishment
2. Investment strategies relating to property
3. Wholesale / sophisticated investor misclassification

⁷ <https://consult.treasury.gov.au/c2026-763205>

⁸ <https://www.investmentmagazine.com.au/2025/11/chalmers-three-principles-will-guide-performance-test-overhaul/>

Our research has identified further potential areas which may lead to poor future advice outcomes:

1. Limited recourse borrowing arrangements (LRBAs) in SMSFs
2. Retirement advice
3. Contribution strategy and tax advice failures
4. Intra-fund advice quality of super funds (including mechanisms to redirect members from intra-fund advice to other advice pathways where required to properly account for their personal circumstances)

We share these points to help ensure that some of the focus is on the broader potential for advice failings, rather than losses relating to product failings.

Motivation #10: Our views on consumer financial literacy and effective consumer-led competition

Our working view is that the population at large has a low level of financial literacy and is poorly suited to make financial decisions without professional support and guidance. There are many studies which demonstrate this. Member engagement is also a challenge amidst a combination of disengagement, reluctance to embrace financial decisions and various behavioural influences (e.g. procrastination) across many consumers. This situation provides a weak basis for effective consumer-led competition. This has been an important motivation for some policy recommendations from groups such as the Productivity Commission.

It is interesting to reflect on the impact of a financial adviser on the engagement and financial literacy of a consumer. We hold the following working views:

1. Engaging a financial adviser reflects engagement with finances. It could also reflect an acknowledgement that sizable engagement is warranted, and that the consumer self-recognises that they may be time-poor, have little interest, or do not have the requisite skills.
2. Engaging a financial adviser will likely increase engagement, at a minimum because the adviser requests information, explains the financial plan etc.
3. A financial advice relationship may contribute to increased financial literacy as they explain the financial plan.
4. Financial advice increases confidence for consumers, even if just through the mechanism and comfort of having a plan in place.

Motivation #11: Duties and responsibilities in an intermediated relationship

Determining duties and responsibilities in an intermediated relationship is difficult. Much of this consultation focuses on the relationship between a member and super platform where that relationship is intermediated by a financial adviser. We consider it important for this consultation to be more explicit in acknowledging this relationship, especially with regard to issues such as:

1. When, and if, the adviser's duty takes primary responsibility away from the platform trustee
2. The benefits and costs of overlapping duties and responsibilities

The second table in Motivation #4 outlines the current working state of this intermediated relationship (see Implementation model (2)).

We also acknowledge that many platforms have advised and unadvised members, representing direct and intermediated relationships. This warrants further consideration as to what degree the trustee is responsible for the portfolio the member has put in place under either arrangement. That is, it is important to consider how the duties and responsibilities of platforms may differ through a direct versus intermediated lens.

Motivation #12: It is more difficult to assess advice quality compared with assessing financial product

It is difficult to assess financial advice quality. We outline some of the challenges below:

1. Advice is a service with (often) a very long horizon. Given the time horizon it is difficult to assess outcomes against a counterfactual.
2. Advice is multi-dimensional. For instance, as well as an investment plan, advice may incorporate a savings plan or strategies to achieve certain retirement outcomes. To what degree should a component part of the advice be assessed versus overall outcomes, and whether the client achieves their overall financial goals?
3. Not all clients can tell if the advice is good. In a 2012 shadow shopping exercise 86 per cent of shadow shoppers rated the advice they had received as "good". However, ASIC rated only 3 per cent of the plans as 'good'⁹. (*Note: This may not reflect the quality of advice being provided in 2026.*) This has some links to the observation that advice often generates client confidence.
4. A distinction should be made between process and quality, including legal quality versus financial quality. A process may meet legal and regulatory hurdles but not deliver great client outcomes.
5. The outcome of the advice can only be compared against a counterfactual.

In short, product outcomes can often be more readily assessed than advice outcomes. Nevertheless, as the intense debate over the YFYS test testifies (see Motivation #8), product assessment is difficult, multi-dimensional and highly contested. This supports our preference for a resourced, empowered APRA to replace the single-metric YFYS test.

Interestingly, as super funds become more service-oriented groups with a greater focus on retirement outcomes (discussed within Motivation #3), the super sector will face some of these same challenges when it comes to assessing quality of outcomes.

⁹ <https://www.professionalplanner.com.au/2012/05/shadow-shopping-shows-inability-to-tell-good-from-bad/>

Responses to select consultation questions

Part 1: Strengthening platform governance

The opening paragraph to this section in the consultation paper broadly aligns with Motivation #5 set out at the start of this submission, where we highlight the difference between investment governance and investment research. In the context of super platforms¹⁰, investment governance reflects a set of baseline activities to ensure a high likelihood of avoiding operational losses including fraud. This leaves end-users (i.e. members) of platforms exposed to other risks, notably market risk and relative performance risk as outlined in Motivation #2.

There is a collection of investment activities as outlined in Motivation #4 that populate investment activities and broadly sit outside of the scope of investment governance. Most importantly, it is unclear where primary responsibility resides with respect to not only governance but also various investment activities in the context of an intermediated relationship where a client of a financial adviser is investing using a super platform. We view it as critical that this review removes all ambiguity around where the responsibilities reside. This concern is further detailed in Motivation #11.

Our working view is that platform trustees should carry strong investment governance responsibilities to ensure that investments available on the platform provide exposure to markets and investment-specific risks at an appropriate cost. However, the responsibility for developing and implementing an investment strategy and managing a client portfolio to reflect that investment strategy should be borne by the financial adviser.

Nevertheless, there are some additional activities that platform trustees could undertake which would add some further protection to members. One example is holding size limits which help to ensure appropriately diversified portfolios. Consideration of these activities must reflect possible disruption to the advice process and the associated costs of any process duplication, which will most likely be borne by the client / member. Consideration should also be given to determining whether there should be formal obligations on trustees of super platforms to undertake these activities.

We think it is important that APRA is sufficiently well-resourced to assess investment governance activities of platform funds. This connects with our comments made in Motivation #8.

Proposal 1: Strengthening governance requirements for Platform Trustees

Q1. How should a “Platform RSE” and a “Platform Trustee” be defined?

We applaud the consideration being given to formally distinguishing different types of super funds. This will facilitate the creation of more specific legislation and regulation which removes ambiguity and the need for interpretation.

Our view is that creating such a definition will not only assist with the purpose of this consultation but should provide additional opportunities for better targeted legislation and regulation. A noteworthy example is the area of retirement where the Retirement Income Covenant and associated regulation and initiatives are stretched to facilitate the roles played by substantially different super fund models.

Exactly defining the two models will be difficult, but the two paragraphs set out in page 11 of the consultation paper capture the essence well. Establishing the finer details might be informed by subsequent consultation. We also note that there will be cases that sit somewhere between the two definitions.

¹⁰ We can't see why, if the investment governance framework is not unreasonable, that those standards would not want to be carried over to an IDPS by a reasonable trustee.

Figures (1) and (2) (on pages 14 and 15 of the consultation paper) motivate two reflections. One is that we think it will be hard to determine the hard line which distinguishes a platform, because there is a broad spectrum of offerings in the system. Some platforms may offer trustee-directed products, possibly a MySuper option, while some funds viewed as largely non-platform may offer a significant choice menu. This doesn't mean we discourage the consideration being given to this idea.

The other reflection is possibly more important. We wonder whether there is an alternative to designating Trustees and RSEs as "platform", under which the different duties and responsibilities associated with platform offerings and non-platform offerings are set out. An RSE and trustee could then operate with appropriately defined responsibilities for all of its offerings without the need for separate RSE and trustee designations. This may better facilitate evolution of offerings in the superannuation system.

Option 1.1: Requirement to set and enforce holding limits for investment options

Q3. Would mandatory holding limits be an effective safeguard to promote diversification and reduce overconcentration risk for platform members?

We hold a strong view that holding limits would be beneficial. First of all, they promote diversification. They reduce the possibility of the scenario of highly concentrated exposures to investment holdings which turn out to be fraudulent or experience some major operational failing, which could lead to catastrophic losses for some consumers (see Motivation #1, loss category B).

Exploring the cases of Shield and First Guardian (see Motivation #6), holding limits provide extra protection beyond the due diligence process. Both investment managers had short track records marking them out as unproven boutique start-ups. Both funds had the potential to invest in illiquid assets. Even if not fraudulent the maximum allocation to these funds should have been moderate – 10% or 20% would have felt far more appropriate (in the absence of fraud insights).

If financial plans had incorporated position size limits to these two funds, the impact on victims would have been far less catastrophic. Further, position size limits would have been a large deterrent to the destructive model of lead generation translating through to aggressive financial plans and then into fraudulent managers. This is because the potential pay-offs of this model would have been far smaller (circa 10% - 20% of the size) and would also have required a lot more costly effort to embed the funds within a diversified portfolio plan. From an advice workflow perspective this would throw 'sand in the wheels', which we believe would have been appropriate. In short, the return to effort of this model for the bad agents involved would have been far less and of reduced interest.

The difficulty with imposing portfolio limits is the level at which they apply. Imposing limits with respect to individual investments, products or managers may inhibit some concentrations that are low risk and justified, such as placing a high percentage within low-risk cash or fixed income products or in indexed funds or ETFs on major indices with a view to accessing higher returns. While risk ratings could be applied to investments or products that are then linked to holding limits, risk is difficult to define, and the issue arises of who would assign particular investments, products or managers a risk category. These considerations suggest that holding limits may be better formulated around operational issues only. But even here issue arise, as discussed below in the response below to Question 4.

Platforms can provide the technology which ensure holding limits are monitored effectively. They bear strong duties and responsibilities to their members. Many platforms already operate holding limits. However, research houses and the financial advice sector should give consideration to holding limits; again, many do.

A further issue is whether holding limits should be codified through legislation or under regulations or be principle-based coupled with obligations imposed on certain parties to ensure that limits are reasonable and adhered to. We lean toward a principles-based approach, noting that an element of discretion seems required that cannot and should not be exercised by regulators.

In summary, we are very supportive of introducing holding limits and see some (not insurmountable) issues around implementation. Further consultation would be beneficial.

Q4. What characteristics of investment options should be considering when setting holding limits?

If we return to the risk framing we set out in Motivation #2, we consider that operational risk is more amenable to being appropriately diversified. Investment-specific risks sit within portfolio construction and so views on risk and diversification become more subjective, and will depend on the consumer's objectives, risk tolerance and personal circumstances.

Through the lens of operational risk, we think the following characteristics are important:

1. Whether the scheme is retail or wholesale
2. The potential size of illiquid asset exposures in the portfolio
3. The quality and reliability of the fund and the investment management firm, e.g. new funds launched by relatively unknown managers investing in illiquid assets without experience are clearly riskier than established funds or those issues by credible and well-resourced investment management firms investing in liquid assets.

Option 1.2: Codified due diligence requirements

Our view is that codified due diligence requirements would be difficult to implement in a consistent manner across the entire ecosystem. Many key due diligence criteria, for instance appropriately experienced senior investment staff, are quite subjective in nature.

One of the benefits of codifying due diligence requirements is that it helps to ensure that a baseline of assessment activity is undertaken. However, the quality of assessment is dependent on a combination of both quality and quantity (e.g. frequency and breadth of review and monitoring) of due diligence activities, which in turn can be a function of resourcing. Many sectors of investment (e.g. the Alternative Investment Management Association¹¹) provide standardised templates.

Finally, our experience suggests that without the right degree of commitment and skill, due diligence risks becoming a 'box-ticking' exercise. Further, bad operators are effectively being provided a template to present an entity that passes due diligence criteria.

Overall, we are balanced on the idea of codifying due diligence requirements. Codification risks creating a box-ticking mindset. Further, criteria may subtly change over time or need to be tailored for specific products or investment strategies.

An alternative might be to set out a principles-based framework for performing adequate due diligence. Regulators would need to monitor how the quality of super funds' due diligence processes. If subsequent failure could be tied back to insufficiently exploring one of the broad areas (especially where recognised industry standards exist) in sufficient depth, then the trustee has a case to answer to.

Good industry practice can involve industry working groups which create and periodically update suitable due diligence criteria. The Financial Services Council (FSC) operate along this model in their FSC Standard No. 31 (*Wrap Superannuation Platform Trustee Investment and Adviser Governance Principles: Standard and Better Practice Guidance*)¹² which amounts to an industry standard that members are expected to attest to, coupled with Better Practice Guidance which is voluntary.

We encourage this consultation to not forgo the opportunity to set out appropriate principle-based due diligence frameworks for financial advisers and research houses.

Option 1.3: Limiting certain conflicted arrangements and payments

We are not aware of all the specific payment types that operate in the advice platform ecosystem. We hear anecdotes which could be considered useful and/or dangerous. But we do believe that conflicts of interest and misaligned agencies undermine the quality of any system. In this case these

¹¹ <https://www.aima.org/sound-practices/due-diligence-questionnaires.html>

¹² <https://fsc.org.au/resources/2891-fsc-standard-31/file>

characteristics could undermine the quality of advice being provided to clients or members and the priority that is placed on best financial interests and outcomes for consumers.

In the case of the advice platform ecosystem, some of the most obvious candidates for conflicts relate to payments made by investment managers (over and above administrative costs related to being placed on a platform) and asset-based payments to advisers, e.g. management fees extracted from the platform. We recommend that the review undertakes to understand all possible payments in the platform / advice ecosystem. Providing transparency on these activities would also deliver system benefits.

Option 1.4: Restricting certain trustee operating models

This is a difficult issue on which we do not consider ourselves sufficiently informed to make a strong recommendation. However, we make a couple of observations.

The first relates to research being undertaken by The Conexus Institute and Conexus Financial into trustee board quality. This research is being updated with a plan to publicly release it later this year, with the largest 40 super funds being examined. One of the areas explored was board competencies in three areas:

1. *Industry* – Experience in, and knowledge, of the super industry and super funds.
2. *Technical* – Technical or professional skills and specialist knowledge to assist with ongoing aspects of the board’s role.
3. *Governance* – Experience and knowledge in board governance.

Our interim results indicate that the outsourced trustees among the group of major super funds we are examining appear to rate strongly in these three areas relative to the universe of profit-for-member super fund boards. The Conexus Institute is prepared to engage further on a confidential basis with respect to these interim research findings. This suggests that any perceived shortcomings in the platform super trustee model must relate to how an outsourced model operates, potentially the depth and breadth of the governance framework. It could also relate to board culture, which is beyond the scope of our research.

We also wonder aloud whether the distance between the trustee and executive management has potential to enhance or reduce the quality of governance.

Second, in our State of Super¹³ discussions we have heard anecdotes around how the exit of outsourced trustee models would restrict new entrants into the super system. This motivates a system design reflection: if new entrants are viewed as bringing valuable innovation to the sector, and if outsourced trustee models represent a cost-effective system entry mechanism, then the system will miss the benefits of new entrants (to a degree).

Proposal 2: Increase penalties under the SIS Act

We have no comments on this proposal.

Part 2: Superannuation switching

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

Waiting period

We are not convinced that a waiting period will be effective in encouraging members to re-consider the activity they are undertaking. However, we view it as a low-harm activity to consider that might have some effect in averting high-pressure sales tactics where consumers are implored to act with

¹³ [State of Super](#) is an annual publication by The Conexus Institute and we offer to present it to boards and executive teams of all super funds on a pro bono basis. We get significant uptake.

haste. It may also be beneficial to introduce standardised communications, potentially with a declaration (or click-box) that members must complete. As an example, a member switching request might generate a communication providing a simple checklist of considerations when switching from one super fund to another and one super fund type to another type of fund (which may be able to be generated digitally based on the switching destination), after which the member has to click an acknowledgement button to continue the switching process.

Visibility of fund flows

We see benefit in requiring receiving funds to collect, monitor and provide information to the regulator on flows into products, especially where these products are higher-risk. Quality analysis of data can produce valuable insights which can identify potentially harmful switching activities before they become a major issue.

An important issue is how well resourced the regulators are to manage and analyse such data. We note recent announcements of additional funding for ASIC in regard to MIS supervision¹⁴, but suspect further funding would be required to maximise the value of collecting and analysing product flow data. In addition, the cost to both industry and regulators should be examined to ensure that it is not excessive relative to potential benefit.

International experience

We do not have a definitive view on the issues raised in consultation question (28) – (30) related to international experience. However, we offer two perspectives based on the Australian experience.

The first is that the potential benefits of the wholesale investor test have not been realised as multiple reviews have failed to set the test at an appropriate level to protect consumers. The 2024-25 Parliamentary Joint Committee review resolved to make only moderate changes to the framework¹⁵. Recommendations made by legal expert Pamela Hanrahan are worthy of reflection:

“This process shows why we need a standing independent expert body, like the former Corporations and Markets Advisory Committee.”

“It would have been better to go deeper and really think about the circumstances in which an individual investor or client really benefits from the protections put in place by the retail client laws, and when they don’t need them as much.”

In regard to specific product rules around MIS, an appropriate balance is needed between disclosure and restrictions:

- Of interest, we also note that under the Corporations Act, a MIS that holds 20% or more in illiquid (or unlisted) assets is deemed an illiquid scheme and is restricted from providing frequent liquidity. There are already liquidity restrictions in place. The question is whether they are being monitored appropriately, and whether the disclosure is sufficient to ensure these issues are considered sufficiently by financial advisers and their clients.

A further consideration is whether MIS could be monitored and risk-rated by ASIC. In our view this would work along the lines of the key risks we frame in Motivation #2, perhaps with a low-medium/high rating applied both in terms of investment (i.e. market and relative performance) risk and operational risk.

We consider it important to identify between these two categories of risk because it may be rational for many people to have high exposure to investment and performance risk, in anticipation that this will deliver higher returns. Disclosing risk in a consumer-friendly manner can be beneficial and can

¹⁴ https://www.financialstandard.com.au/news/asic-to-receive-10m-in-fy27-to-improve-mis-supervision-179812505?utm_medium=email&utm_source=WildebeestNewsletter

¹⁵ <https://www.professionalplanner.com.au/2025/02/disappointing-end-to-pjc-wholesale-investor-review/>

reinforce importance conversations between consumers and advisers about the trade-off between return and risk (although some work would be required to identify terminology that resonates). Disclosing a basic operational risk assessment would likely lead to a lower use of MIS with medium-to-high operational risk categories for a range of reasons including professional indemnity insurance for advisers.

We are not advocating that this is essential. It depends on many factors including:

- Other initiatives implemented, such as due diligence requirements for platform supers. These may reduce the need for additional consumer protections.
- Cost of implementation, in particular the resourcing required for ASIC to develop and maintain a MIS rating framework of suitable standard.

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

We offer no comments on this section.

Proposal 5: Requiring Platform Trustees to compensate members for eligible losses

We offer no comments on this section.