22 May 2026

The Treasury
Langton Crescent
Parkes ACT 2600

BY ELECTRONIC LODGEMENT

Dear Sir/Madam,

SMSF ASSOCIATION SUBMISSION – ENHANCING MEMBER PROTECTIONS IN THE SUPERANNUATION SYSTEM

The SMSF Association welcomes the opportunity to provide this submission in response to Treasury's consultation on *Enhancing member protections in the superannuation system*.

The Association supports the Government's objective of strengthening confidence in superannuation and improving protections for members who are exposed to misconduct, conflicted distribution arrangements or product failures. Members should be able to rely on strong governance, effective enforcement and clear pathways for redress where regulated entities fail to meet their obligations.

However, we are concerned that several of the proposals would add friction, cost and complexity across the system without addressing the main causes of recent consumer harm. The issues identified in the consultation paper appear to arise from a combination of poor product governance, lead generation and distribution practices, inadequate supervision of advice models, and failures to apply or enforce obligations already imposed on trustees, Australian Financial Services (AFS) licensees and responsible entities (REs). Reforms that restrict switching, characterise particular structures as inherently risky or reduce access to advice may treat the symptoms rather than causes.

The SMSF sector is particularly sensitive to this distinction. SMSFs are an established and integral component of Australia's retirement income system. They are not an investment product, nor are they a substitute for managed investment scheme (MIS), platform or advice regulation. A member's decision to establish or rollover to an SMSF should not be made more difficult merely because some consumers have previously been advised to use an SMSF or platform as a pathway to a problematic underlying investment.

The Association considers that the reform package should be targeted at the conduct, incentives and governance failures that create harm. This requires stronger oversight and enforcement of existing trustee and financial adviser obligations, better oversight of MISs and REs, robust action against harmful lead generation, and compensation mechanisms that allocate responsibility to the entities closest to the failure. It should not diminish informed member choice, legitimate licensed SMSF advice or the ability of fund members to implement appropriate advice in a timely way.

Our detailed responses to the consultation issues are set out below.

If you have any questions about our submission, please do not hesitate to Tracey Scotchbrook, Head of Policy and Advocacy, via email at traceyscotchbrook@smsfassociation.com.

Yours sincerely,

Peter Burgess
Chief Executive Officer

ABOUT THE SMSF ASSOCIATION

The SMSF Association is the peak body representing the self-managed superannuation fund (SMSF) sector which is comprised of over 1.2 million SMSF members and a diverse range of financial professionals. The SMSF Association continues to build integrity through professional and education standards for practitioners who service the SMSF sector. The SMSF Association consists of professional members, principally accountants, auditors, lawyers, financial advisers, tax professionals and actuaries. Additionally, the SMSF Association represents SMSF trustee members and provides them with access to independent education materials to assist them in the running of their SMSF.

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Executive Summary

The Association supports reforms that improve member protection and system integrity. Recent failures involving Shield and First Guardian illustrate the severe harm that can occur where consumers are channelled through opaque lead generation, poor advice or conflicted distribution arrangements into high-risk or poorly governed investments. It is appropriate for Government to consider how the system can intervene earlier and provide clearer redress where members suffer loss through misconduct.

The policy response must be precise. Superannuation members benefit from a competitive system that supports portability, advice, product choice and self-direction. Broad measures that delay all switching, restrict advice fee deductions or label SMSFs and platform products as inherently higher risk may reduce member agency and access to advice, while leaving underlying product and distribution risks unresolved.

In our view, the consultation paper identifies several obligations that already exist, particularly under the *Superannuation Industry (Supervision) Act 1993* (SIS Act), APRA's prudential standards and the AFS licensing framework. Where failures have occurred, the central question should be why those obligations did not prevent harm and how accountability, supervision and enforcement can be improved. The first response to a failure should not be to add new layers of prescriptive regulation unless there is clear evidence that the existing framework is incapable of being made effective.

We support targeted reforms directed to demonstrated risks: stronger scrutiny of trustee due diligence and conflicts of interest management; action against conflicted listing, distribution and volume-based arrangements; better regulator visibility of suspicious switching and advice patterns; and clear compensation pathways that allocate liability to the responsible regulated entity. We do not support measures that would restrict legitimate SMSF establishment, discourage access to licensed financial advice or shift costs to sectors not responsible for the harm.

The Government's concurrent consultations on lead generation activity, MISs and the sustainability of the Compensation Scheme of Last Resort (CSLR) should be considered together. Isolated reforms risk moving liability or cost across the ecosystem without solving the product, advice and distribution failures that have caused the loss.

Key Recommendations

- Focus reforms on misconduct, conflicted distribution, product governance and enforcement gaps, rather than on the existence of member choice, SMSFs or platform structures.
- Do not adopt a rigid or numerical definition of a Platform RSE or Platform Trustee. If a definition is required, it should be principles-based, risk-focused and resistant to regulatory arbitrage.
- Do not mandate prescriptive holding limits in legislation. Trustees should be required to set, document, justify, monitor and enforce appropriate limits under the existing investment governance framework.
- Improve due diligence expectations through enhanced APRA guidance or targeted prudential amendments, with evidence-based onboarding and ongoing monitoring obligations, rather than checklist-style legislative codification.

- Take targeted action against conflicted platform payments, preferred placement, volume-based payments and arrangements that compromise trustee independence, while preserving legitimate operational arrangements.
- Review trustee-for-hire and outsourced operating models through the lens of accountability, control, capital backing and enforceability. An outright prohibition should not be the starting point.
- Any increase to SIS Act penalties should be calibrated, proportionate and accompanied by stronger supervision and enforcement. Penalty increases alone will not improve governance, remembering they will be paid for from members retirement savings.
- Do not introduce mandatory waiting periods for superannuation switching. This will delay legitimate licensed advice, increase costs and create friction without necessarily preventing misconduct that occurs upstream.
- Do not treat SMSF rollovers or platform rollovers as inherently higher risk. Any warnings should be neutral, regulator-designed and focused on the specific transaction, not on discouraging member choice.
- Do not prohibit financial advice fee deductions for switching-related advice. Strengthen targeted verification and monitoring of fee deductions, but preserve members' ability to pay for appropriate advice from superannuation where permitted.
- Ensure compensation frameworks place responsibility on the entity or entities closest to the failure and do not shift costs to SMSF trustees or unrelated members through broad cross-subsidies.

Proposals and Consultation Questions

Overview

We support the objective of enhancing member protections but considers that the package should be recast around the source of harm. Recent events appear to involve an interconnected chain: lead generation, conflicted advice, superannuation switching, platform or trustee governance and MIS failures. Each link should be assessed according to its role in the loss.

A reform that adds friction at the point of switching will not necessarily address the conduct that occurred before the member made the decision. Similarly, rules aimed at platforms or SMSFs will not address poor governance of the underlying MIS or inadequate supervision of a licensed financial adviser who recommended the investment. Reforms should therefore be evidence-based, targeted and designed to prevent harm at the point where the harm is created.

We strongly encourage Treasury to consider these proposals alongside the concurrent consultations on lead generation, MISs and the CSLR. A coherent response should avoid duplication, inconsistent liability settings and unintended cost shifting.

Proposal 1: Strengthening platform governance

The Association supports the objective of strengthening governance where there are demonstrated gaps that have contributed to member harm. The current framework already imposes significant obligations on trustees, including duties to act in members' best financial interests, investment governance requirements and conflicts of interest management obligations. The reforms should therefore focus on accountability, supervision and enforceability rather than simply layering further prescriptive obligations over existing duties.

1. How should a "Platform Trustee" and "Platform RSE" be defined?

The Association does not support a rigid definition based mainly on the number of investment options, the existence of member direction or the breadth of a menu. Those features may describe how a product is delivered, but they are imperfect proxies for risk. A product with many listed investments may be transparent and well governed, while a product with fewer options may still expose members to poor governance, conflicted arrangements or unsuitable underlying investments.

A numerical definition would also invite threshold management. Trustees could restructure menus, bundle options or remove investment choice to avoid being captured, which may reduce transparency and competition without improving member protection. It may also create uneven outcomes where comparable risks are treated differently depending on how a product is labelled.

If a definition is required, it should focus on the functions and risks Treasury is seeking to address. Relevant indicators may include the extent to which members or advisers construct bespoke portfolios from specific financial products, the nature of trustee oversight of underlying products, the role of third-party product issuers, the degree of reliance on external distribution channels, and the trustee's practical ability to intervene when risks emerge. The definition should not imply that member choice itself is problematic.

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

The term may be workable as a descriptive label, but it should not become a basis for a two-tiered regulatory framework that assumes trustee-directed products are inherently low risk and member-directed products are inherently high risk.

A more accurate distinction would focus on who exercises investment control and what due diligence and monitoring obligations attach to the trustee. Even trustee-directed options can involve complex underlying investments and governance risks. The policy framework should therefore focus on the nature of the risk and the robustness of governance, not on labels.

Requirement to set and enforce holding limits for investment options

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

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

We do not support prescriptive holding limits imposed through legislation. Diversification is an important investment governance principle, but appropriate limits depend on the characteristics of the investment, the nature of the menu, the member's broader portfolio and the trustee's risk assessment. A single statutory limit is unlikely to be suitable across such varied circumstances.

The consultation paper points to examples where limits existed but were not enforced. That is primarily an enforcement and accountability issue. The more effective response is to require trustees to demonstrate that they have considered concentration risk, set appropriate limits where needed, disclosed them clearly, monitored compliance and acted when limits are breached.

Prescriptive limits can also create a false sense of safety. Diversification may reduce exposure to the failure of one investment, but it does not solve fraud, product governance failure or conflicted distribution. A member could comply with a numerical cap and still be exposed to an unsuitable product if due diligence and monitoring are weak.

We would support APRA setting clearer supervisory expectations that trustees document their approach to holding limits and explain the circumstances in which limits may be overridden or varied. These expectations should apply proportionately and should not prevent a trustee or financial adviser from exercising professional judgement where concentration is appropriate and properly justified.

Codified due diligence requirements

5. **Should codified due diligence obligations be introduced?**

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

We support clearer and more consistent due diligence expectations but caution against overly prescriptive codification. Trustees should be able to demonstrate that they understand the investments made available to members, have assessed the risks and governance of those investments, and have processes to monitor performance, liquidity, conflicts, valuation and material changes over time.

These expectations are already embedded in the prudential framework. If the Government considers an uplift necessary, the preferred approach is enhanced APRA guidance or targeted prudential amendments that reinforce the need for documented onboarding frameworks, clear assessment criteria, board approval and evidence-based decision-making. This would avoid creating a checklist culture in which compliance is measured by whether a document exists rather than whether the trustee has made a sound judgement.

Minimum expectations could include:

- a documented product onboarding framework;
- assessment of product structure, liquidity, valuation, responsible entity capability, conflicts, fees, distribution risks and target market;
- consideration of stress scenarios;
- ongoing review triggers;
- escalation pathways; and
- Board reporting.

These matters should be applied proportionately and with flexibility for different product types.

Conflicted payments and arrangements

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?**

   If so, which types of payments or arrangements pose the greatest risk of undermining a Platform Trustee's independence?

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

We support targeted action to address payments or arrangements that compromise trustee independence or create incentives inconsistent with member outcomes. In particular, volume-based payments, payments linked to preferred placement, payments tied to continued availability, and arrangements that reward member flows to particular products create a risk that commercial interests may influence due diligence or monitoring decisions.

However, any restrictions must be precise and proportionate.

They should not be framed only as platform-specific if the same conflict can arise in other superannuation contexts. The focus should be on the nature of the conflict and whether it affects the trustee's ability to act in members' best financial interests.

A broad prohibition could capture legitimate commercial arrangements, increase member costs, reduce product availability or distort platform economics without necessarily targeting the harmful incentive. The focus should be on payments that create a real risk of influencing product admission, retention, promotion or monitoring decisions.

Trustees should be required to identify, disclose, manage and, where necessary, avoid these arrangements. Regulators should be able to scrutinise arrangements that are not demonstrably consistent with members' best financial interests. Where a payment arrangement compromises independence or creates an incentive to maintain a problematic investment option, the arrangement should be prohibited.

Legitimate operational arrangements should remain permissible where they are transparent, reflect genuine services provided, are not linked to flows or preferential treatment, and are demonstrably in members' best financial interests. Trustees should be required to document the rationale for such arrangements and show how conflicts are identified, managed or avoided.

Regulators should have access to the information necessary to test whether arrangements are genuine operational arrangements or disguised conflicted incentives.

Restricting certain trustee operating models

9. **What features of an outsourced model may reduce governance effectiveness?**
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?**
11. **What would the impact be of banning the trustee for hire model?**

We acknowledge the concerns raise around “trustee-for-hire” and highly outsourced operating models. A model can weaken governance where legal responsibility is separated from operational control, if the trustee lacks the resources or expertise to challenge service providers, or if the entity bearing responsibility does not have sufficient capital or accountability to meet the consequences of failure.

Those risks do not necessarily justify an outright ban.

Outsourcing is a common and legitimate feature of financial services, and many functions can be outsourced without weakening trustee accountability if roles, reporting, escalation, oversight and controls are clear. The key issue is whether the trustee retains genuine decision-making authority and can evidence effective oversight.

We would support a review of trustee-for-hire models in light of recent failures, including consideration of Financial Accountability Regime, capital backing, board capability, conflicts, delegated authority, related-party arrangements and service provider oversight. Any reform should strengthen accountability and control rather than prohibit models based on label alone.

Proposal 2: Increase penalties under the SIS Act

We support a credible enforcement framework. Penalties should deter serious misconduct and systemic governance failure, but penalty increases should not be treated as a substitute for timely supervision and enforcement.

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

We do not support automatic or full alignment of SIS Act penalties with the Corporations Act. The regimes serve different purposes and apply to different entities and conduct. Any increase should be calibrated to the nature of the obligation, the seriousness of the breach, the scale of harm and the relevant sector. Further, penalties are paid for by members retirement savings not commercial profits.

For SMSFs, proportionality is essential. SMSF trustees are generally individuals or related parties managing their own retirement savings. Importing corporate-style maximum penalties into this environment could create disproportionate consequences for technical or administrative breaches and increase costs for compliant trustees and their advisers.

Where penalties are increased for APRA-regulated trustees or large entities, those increases should be targeted at serious misconduct, systemic breaches and failures that materially harm members.

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

Higher maximum penalties may support deterrence in some cases, but they will not, by themselves, improve governance. Governance improves when obligations are clear, boards and accountable persons understand their responsibilities, regulators supervise actively, and breaches are detected and enforced in a timely way.

There is also a risk that higher penalty exposure will simply be passed on to members through higher fees, insurance costs or more conservative product settings. They do not hit their intended target. We would therefore support a balanced approach with:

- proportionate penalties;
- stronger supervision;
- clear accountability under the Financial Accountability Regime; and
- enforcement focused on serious misconduct and systemic failure.

Proposal 3: Superannuation switching

We do not support broad-based restrictions on superannuation switching. Portability is a core feature of the superannuation system and supports member choice, competition and the ability to implement appropriate advice. The harm identified in recent matters appears to arise from upstream lead generation, advice failures, conflicted distribution and product governance, rather than from the existence of switching rights themselves.

Introducing a waiting period would add friction after the member has already been advised. In many harmful models, the pressure or steering occurs well before the switching request is made. Scammers and other unscrupulous operators will adjust their processes and scripts and simply factor in a waiting period. A delay may not change the member's decision, but it would impose costs and uncertainty on members who have received appropriate advice or who need to act promptly for legitimate reasons.

Delays also expose members to market or insurance risk and could result in adverse member outcomes.

Waiting Periods

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

We do not support the introduction of a mandatory waiting period for all inter-fund switches.

Accordingly, no length of waiting period is recommended.

Such an approach would delay legitimate rollovers, consolidation, retirement planning, implementation of advice and movement away from unsuitable or underperforming arrangements. It would also require system changes, operational processes, member communications and reconfirmation mechanisms, with costs ultimately borne by all members.

A waiting period could also undermine confidence in the existing rollover framework, which is designed to facilitate timely movement once a valid instruction is received. The three-day processing rule should not be conflated with the time a member spends considering advice before a rollover instruction is given.

The addition of a waiting period is unlikely to change the outcome where the member has already been subject to pressure or poor advice, while a longer waiting period would materially impede legitimate decisions. The solution to poor advice is better advice supervision and enforcement, not a system-wide delay imposed on all members.

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

We do not support the introduction of mandatory waiting periods.

A reconfirmation process would add complexity and delay without addressing the underlying causes of harm. It may also create uncertainty where the member has already given a valid instruction after receiving advice.

If Government proceeds with a waiting period despite these concerns, any reconfirmation process should be simple, digital, time-limited and supported by neutral regulator-designed information. It should not allow transferring funds to use the process to discourage legitimate super switching.

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

Yes. A waiting period would delay legitimate rollovers, consolidation, retirement planning, insurance adjustments, implementation of advice and movement away from unsuitable or underperforming arrangements. It may also leave members out of the market or in an unwanted investment for longer than necessary.

The delay would impose operational costs on funds, advisers and administrators, with those costs ultimately borne by fund members. It may also reduce competition by making it harder for members to leave incumbent funds.

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

We do not support a waiting period or an automatic lapse mechanism.

A valid rollover request should not lapse merely because a waiting period has expired, unless there is clear evidence of fraud, identity risk, incapacity or a revoked instruction.

If a lapse mechanism is introduced, it should be limited and should not require members to restart the entire process. Otherwise, it would create unnecessary friction and increase the risk of members abandoning legitimate advice or consolidation decisions.

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

Funds would face system changes, workflow redesign, member communication requirements, financial adviser and administrator coordination, complaints handling, exception processing and additional record keeping. These costs would be significant and would ultimately be borne by all fund members.

There would also be difficult operational questions about when the waiting period begins, how it applies to partial rollovers, contribution splitting, how reconfirmation is obtained, how advice changes are managed, and how the process interacts with existing rollover timeframes and cooling-off rights.

The better mitigation is not to introduce a waiting period. If Government proceeds, the framework should be nationally standardised, digital, narrow in scope and supported by regulator-designed communications.

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

We do not support a waiting period and therefore do not support related restrictions on financial adviser-member communication.

Restricting communications may prevent a member from obtaining clarification, correcting misunderstandings or receiving necessary advice during the waiting period. It could also undermine the financial adviser's professional obligations to respond to client queries and act in the client's best interests.

Noting that many financial advice firms assist their clients in the rollover process, which is not always straight forward, and does not always occur within the currently prescribed time frames. High-pressure or misleading communications should be addressed directly through licensed financial advice regulation, AFS licensee supervision, anti-hawking laws and lead generation reforms, rather than by preventing legitimate financial advice conversations.

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?

We do not support the introduction of a waiting period.

A waiting period between licensed financial advice and acceptance would interfere with the financial planning advice process and may delay implementation of appropriate recommendations. Clients already receive advice documents and have time to consider them in the ordinary course. The financial planning advice process itself takes time, so considerable time can pass from when a client first commences discussions with their financial adviser, to receiving the formal advice, to then executing that advice.

Where concerns exist about pressure selling or poor licensed financial advice, the response should be stronger AFS licensee oversight, monitoring of high-risk advice models, enforcement of best interests duties and targeted action against conflicted lead generation. A blanket delay would affect compliant licensed advisers and informed members while not necessarily deterring bad actors.

Coverage

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

We do not support either approach. A universal waiting period would impose unnecessary friction on all superannuation fund members. A targeted waiting period would require Government to label certain switches as higher risk, which could embed regulatory bias and distort member behaviour.

We are particularly concerned that SMSF rollovers or platform rollovers may be captured by a targeted framework. SMSFs and platforms are not inherently inappropriate. The risk depends on the licensed financial advice, the member's circumstances, the underlying investment and the governance arrangements.

22. How should "higher-risk product" be defined?

We do not support defining higher-risk products for the purpose of super-switching restrictions. Risk is multi-dimensional and depends on investment strategy, liquidity, leverage, governance, valuation, disclosure, advice and member circumstances.

A prescriptive definition risks confusing investment risk with governance or misconduct risk. Investment risk is an inherent and necessary part of long-term retirement investing. Governance failure, fraud and conflicted distribution are different risks and should be addressed directly. If the Government needs to identify risks for supervisory purposes, that should be done through regulator surveillance and data analytics rather than through a public label that attaches to particular structures or products.

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

If a waiting period is introduced, broad exemptions would be necessary, including for intra-fund switches, consolidation of small balances, implementation of financial planning advice from a licensed financial adviser, rollovers required for retirement income or pension commencement, family law and death benefit processes, trustee-initiated successor fund transfers, and other circumstances where a delay would cause detriment.

However, the need for extensive exemptions demonstrates the difficulty of designing a waiting period that does not impede legitimate choice. Our position is that waiting periods should not be introduced.

Warnings and Notifications

24. What content should be included in notifications to consumers switching to a platform RSE or switching to an SMSF?

Any notification should be neutral, factual and regulator designed. For platform RSEs, it should explain that the financial product may allow members or their licensed financial adviser to choose from a broader investment menu and that the member should understand fees, investment options, diversification, liquidity, insurance implications and advice arrangements before proceeding.

For SMSFs, the notification should explain that members take on trustee or director responsibilities, including obligations relating to investment strategy, record keeping, annual audit, tax and regulatory compliance. It should also explain that members should consider costs, trustee responsibilities, insurance implications, estate planning and the need for appropriate licensed financial advice.

The notification should not imply that switching to a platform or SMSF is inherently inappropriate or higher risk. It should support informed choice by explaining practical differences, responsibilities and risks.

We recommend that the Australian Taxation Office as regulator be the responsible party for the production of any factsheets or information material to be distributed by APRA fund trustees. This ensures that the messaging to SMSF trustees (potential or actual) is independent, unbiased, consistent and factual.

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

Regulators are more appropriate to design the content of warnings or notifications. A transferring superannuation fund has an inherent commercial interest in retaining member balances, which may create a perception that its warnings are designed to discourage switching rather than inform the member.

The delivery mechanism could involve funds providing the notification as part of the process, but the content should be standardised and regulator-approved to ensure neutrality, accuracy and consistency across the system.

Implementation

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

The introduction of waiting periods would require system changes, process redesign, member communications, financial adviser and administrator coordination, exception handling, monitoring, record keeping and complaints management. These costs would ultimately be borne by all fund members.

The costs are difficult to justify where there is no clear evidence that a waiting period would materially reduce the harms identified in the consultation paper. Reforms that target lead generation, advice misconduct and product governance would be more efficient and better aligned with the source of harm.

Visibility of fund flows

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?

We strongly support improved regulator visibility of suspicious switching patterns, licensed financial adviser models and distribution channels. Regulators should be able to identify unusual flows connected to particular financial advisers, AFS licensees, lead generators, platforms or products.

However, we do not support requiring receiving superannuation funds to report flows into products labelled as higher risk unless that concept is carefully defined for supervisory purposes and not used to stigmatise legitimate structures such as SMSFs. Reporting should focus on risk indicators such as unusual concentration of flows, repeated use of particular advisers or licensees, lead generation involvement, rapid growth of a product and complaints or red flags.

The information should be used for regulatory surveillance and early intervention, not as a basis for delaying or discouraging legitimate member choice.

International Experience

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?

We do not support broad asset-class restrictions as a primary consumer protection tool. Such restrictions may reduce exposure to some risks, but they also risk limiting diversification, reducing access to legitimate investment opportunities and encouraging product restructuring to avoid the rules.

The Australian superannuation system differs from other jurisdictions because superannuation is compulsory, long-term and already subject to extensive trustee, licensed advice and disclosure frameworks. Importing overseas restrictions without careful calibration may produce unintended effects, including reduced competition, concentration in larger providers and diminished member choice.

The better response is stronger product governance, responsible entity accountability, trustee due diligence and regulatory intervention where a product or distribution model presents material risk.

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

Retail access should be governed by risk-based product regulation, disclosure, design and distribution obligations, trustee due diligence and licensed advice obligations. The Association supports stronger oversight where a scheme has complex, illiquid, leveraged, opaque or high-conflict features.

However, creating a blunt restricted/unrestricted classification may oversimplify risk and reduce access to legitimate investments. Any additional conditions should be tied to objective risk features

and governance weaknesses, not merely to asset class or the fact that an investment is accessed through superannuation.

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?

Restrictions could create significant transition issues for MISs, trustees, platforms, financial advisers and members. Existing investors may face liquidity constraints, forced sale risks, valuation uncertainty, tax consequences, member communication challenges and operational complexity if access is restricted after the investment has been made.

We support a broader review of the MIS regime, including registration, capital adequacy, responsible entity capability, compliance plans, valuation practices and early-stage regulatory oversight. Reform should address product governance at its source rather than relying on downstream restrictions that may be difficult to implement fairly for existing investors.

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

We do not support prohibiting financial planning advice fee deductions for super-switching-related advice. The mechanism by which advice is paid is not the cause of the harm identified in the consultation paper. The problem is poor-quality, conflicted or inappropriate advice, including licensed financial advice that has not been appropriately supervised by the AFS licensee and the distribution models that feed it.

Advice fee deductions are an important access to advice mechanism. Many members cannot afford to pay substantial financial planning advice fees from personal after-tax cashflow, especially where the financial planning advice is complex and relates to superannuation. Restricting deductions could reduce access to advice, encourage unadvised decisions, risking further consumer detriment, or cause unadvised members to remain in underperforming or inappropriate funds.

This is particularly relevant for SMSFs. Licensed financial advice about establishing or rolling over to an SMSF can be complex and often requires consideration of trustee responsibilities, suitability, investment strategy, costs, insurance, estate planning, tax and ongoing administration. A prohibition or blunt fee cap could make high-quality SMSF advice less accessible and undermine informed decision-making.

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

We do not support this proposal. A prohibition would apply to legitimate licensed financial advice as well as inappropriate advice and would not directly address lead generation, conflicted remuneration, advice quality or product governance failures.

The ability to pay for superannuation advice from superannuation funds is an important access to advice mechanism. Many members cannot afford to pay advice fees from personal cashflow, particularly where the advice is complex and relates to retirement savings. A prohibition may reduce access to advice and increase unadvised switching.

The better approach is targeted verification, monitoring and enforcement to ensure advice fee deductions are authorised, reasonable, related to the member's superannuation interests and connected to genuine advice services.

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

Our preferred option is a targeted version of Option 4.2: codified and proportionate obligations on receiving funds to verify and monitor advice fee deductions. This approach can strengthen gatekeeping without preventing members from accessing advice.

Receiving funds should be able to verify member authorisation, financial adviser and AFS licensee details, the connection between the fee and the member's superannuation interests, and whether the fee falls within reasonable parameters. They should not be required to assess the quality or appropriateness of the personal advice, which remains the responsibility of the financial adviser and AFS licensee.

Risk-based monitoring should focus on high-risk behaviours, including repeated switching, unusually high fees, reliance on lead generation, repeated use of particular advisers or licensees, and complaints or remediation indicators.

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

We do not support restrictions that single out SMSFs. SMSF advice is a legitimate and established part of the financial advice profession and can involve complex issues including establishment, trustee obligations, investment strategy, costs, tax, insurance, estate planning and ongoing compliance.

Restricting fee deductions from SMSFs would reduce access to advice and may discourage members from obtaining professional support before establishing or operating an SMSF. The issue should be whether the fee is properly incurred, authorised and connected to the member's superannuation interests, not whether the fund is an SMSF.

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

Restricting advice fee deductions would reduce members' ability to obtain licensed financial advice, particularly where they cannot fund advice from personal cashflow. This would be contrary to the policy objective of improving access to financial advice and may increase the risk of unadvised decisions.

For SMSFs, the impact would be particularly significant because establishment and rollover advice is often upfront, detailed and tailored. If members cannot pay for this advice, where appropriate, from their superannuation funds, they may either proceed without advice or be deterred from an otherwise suitable SMSF structure and their right to choose.

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

We do not support balance or age thresholds. Such thresholds are blunt proxies for vulnerability, need and advice complexity. A member with a lower balance may need important advice, while a member with a higher balance may need relatively simple advice.

Thresholds may also create cliff effects and distort behaviour. Our preferred approach is the use of risk-based monitoring rather than fixed thresholds or blunt instruments that do not take individual needs and circumstances into account.

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

Barriers include limited access to advice documents, uncertainty about the trustee's role in assessing advice, privacy constraints, system limitations, inconsistent data standards, difficulty identifying high-risk advice models, and concern that trustees may be held responsible for the quality of advice if they undertake deeper checks.

These barriers can be addressed through standardised data fields, clear regulatory guidance on the scope of trustee verification, risk-based monitoring expectations, information-sharing with regulators, and safe-harbour style provisions where trustees act reasonably within their prescribed role.

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

Layering advice fee restrictions on top of a waiting period would compound friction and delay. Members could face a slower switching process, additional documentation requirements, further uncertainty and higher advice costs.

We strongly recommend the avoidance of overlapping restrictions. If strengthened fee deduction oversight is introduced, it should be targeted and should not be combined with a waiting period that delays implementation of legitimate advice.

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

We support clear and effective redress pathways for members who suffer loss because of misconduct or governance failures. Consumers should not be left to navigate overlapping and uncertain pathways involving trustees, REs, financial advisers, AFCA, CSLR, operational risk reserves, regulator action and Government assistance without clarity about which mechanism applies.

At the same time, compensation reforms must maintain a clear allocation of responsibility. Losses should be borne by the entity or entities that caused or failed to prevent the harm, not shifted broadly to unrelated members, SMSF trustees or sectors that had no involvement in the failure.

Funding of member compensation

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

Existing pathways can be complex, particularly where several entities may have contributed to the loss. A member may need to navigate trustee remediation, financial adviser or AFS licensee complaints, AFCA, CSLR, regulator action, court proceedings, insurance, operational risk reserves and Part 23 assistance.

We support work to simplify the member journey and clarify the sequencing of redress pathways. Members should have a clearer understanding of which entity is responsible, which mechanism applies, expected timeframes and how overlapping mechanisms interact.

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

We do not support broad pre-funding obligations that may increase costs for members and create idle capital buffers without a clear link to risk. Nor should compensation obligations be designed in a way that allows trustees to avoid responsibility because capital has not been accumulated.

If a trustee compensation obligation is introduced, funding should be risk-based and linked to the trustee's business model, product menu, governance risk and capacity to meet obligations. A hybrid approach may be necessary, involving minimum financial resilience, insurance or capital support for higher-risk models, and post-event funding where liability is established.

Funding design should ensure costs are borne by the responsible trustee or entities, not by unrelated SMSF trustees or members across the broader system.

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 pre-funding is adopted, a principles-based approach with regulatory guidance is preferable to a simple prescriptive formula. A formula based only on funds under management may not reflect the actual risk of the investment menu, the quality of governance, the nature of underlying products or the trustee's operating model.

Relevant exposure measures could include the proportion of member-directed or externally managed options, the liquidity and complexity of available investments, concentration levels, product due diligence outcomes, conflicts profile, complaint history and reliance on outsourced arrangements. Any requirement should be supervised by APRA and calibrated to avoid unnecessary member costs.

Eligible Loss

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"?

The criteria should clearly exclude ordinary investment loss, market volatility and legitimate underperformance. An eligible loss should require credible evidence that the loss was caused by

external fraud, theft, dishonest conduct or product collapse involving misconduct, and that the loss was not merely the crystallisation of disclosed investment risk.

The threshold should be robust enough to prevent moral hazard but practical enough to allow timely action. It could be based on findings or evidence from ASIC, APRA, a court, an administrator, liquidator, receiver, AFCA or another independent decision-maker. The framework should also allow for apportionment where adviser misconduct, licensee failure, responsible entity conduct and trustee governance each contributed to the loss.

Activation

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

The decision-maker should have regulatory expertise, independence and access to relevant information. In many cases, ASIC will have the closest connection to misconduct investigations involving financial products and financial planning advice, while APRA will have expertise in trustee governance and prudential obligations.

The Association considers that a coordinated model may be preferable to allocating the function to a single body. For example, ASIC could identify misconduct and direct remediation where financial services laws are involved, APRA could assess trustee governance and financial resilience, and AFCA could continue to determine individual complaints within its jurisdiction. Clear statutory coordination would be required.

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

The mechanism should establish clear sequencing and avoid double recovery. Where the trustee is responsible for the loss, trustee remediation should be the primary pathway. Where the loss arises from a financial adviser or AFS licensee misconduct, AFCA and CSLR pathways should remain available. Where theft or fraud causes substantial diminution of a fund's assets, the role of Part 23 should be clarified.

The ORFR should remain directed to operational risk events and should not become a general investment loss compensation fund. Any new mechanism should include rules for contribution, recovery and apportionment between trustees, responsible entities, financial advisers, AFS licensees and other parties responsible for the loss.

Determining Compensation

44. How should compensation be determined?

Compensation should be determined by reference to the loss caused by the relevant misconduct or governance failure, subject to evidence and causation. It should not compensate members for ordinary investment risk or provide a windfall.

A counterfactual approach may be appropriate where the loss arises from financial planning advice misconduct, because it asks what the member would likely have done but for the misconduct. A capital loss approach may be more appropriate where the loss is caused by fraud or theft, and the

objective is to restore capital. Capped compensation may reduce moral hazard and broader cost, but risks leaving members under-compensated in severe cases.

The appropriate method should depend on the cause of loss and the responsible party. The framework should preserve flexibility to apply the method that best reflects causation, fairness and consistency with existing AFCA and CSLR approaches.

Interaction with existing redress mechanisms

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

Existing mechanisms should be aligned so members are not required to pursue multiple sequential pathways unnecessarily. This requires clear rules on jurisdiction, sequencing, information-sharing, apportionment, recovery rights and double recovery.

The role of Part 23 should be reviewed and clarified, particularly where losses arise from fraud or theft in investment options accessed through superannuation. AFCA's ability to deal with multi-party matters should also be considered, including complaints involving financial advisers, AFS licensees, trustees and REs.

Any new mechanism should avoid shifting costs to SMSF trustees or unrelated members through broad levies where they did not cause or benefit from the failed arrangement.

Alternative compensation proposals

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

We support consideration of an ASIC directions power to require trustees or other regulated entities to commence remediation where ASIC has evidence of systemic misconduct, governance failure or member harm. Such a power could support earlier intervention than litigation and provide a structured pathway for remediation.

The power should include clear statutory thresholds, procedural fairness, reasons, timeframes and review rights. It should also be capable of being directed to the appropriate entity, including an adviser licensee or responsible entity, not only a trustee. Where multiple entities contributed to the loss, the direction framework should support apportionment and recovery from those responsible.

Closing Comments

The SMSF Association supports the objective of improving member protections, but reform must be directed to the source of harm. The central issues are not member choice, SMSFs or switching itself. They are misconduct, conflicted incentives, poor product governance, weak supervision and failures to enforce existing obligations.

A proportionate reform package should preserve informed choice and access to advice while strengthening accountability across the distribution and product chain. This will better protect members, maintain confidence in superannuation and avoid imposing unnecessary cost and complexity on compliant trustees, advisers and SMSF members.