



Submission to Treasury  
Enhancing Member Protections  
in the Superannuation System

22 May 2026

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Mr Cameron Robinson  
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Treasury  
To be lodged via online portal  
Sent via email: [superannuation@treasury.gov.au](mailto:superannuation@treasury.gov.au)

22 May 2026

Dear Mr Robinson

### **Enhancing Member Protections in the Superannuation System**

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission in response to Treasury's consultation paper on *Enhancing Consumer Protections in the Superannuation System*.<sup>1</sup>

#### **About ASFA**

ASFA has been operating since 1962 and is the peak policy, research and advocacy body for Australia's superannuation industry. ASFA represents the APRA regulated superannuation industry with over 100 organisations as members from corporate, industry, retail and public sector funds, and service providers.

We develop policy positions through collaboration with our diverse membership base and use our deep technical expertise and research capabilities to assist in advancing outcomes for Australians.

ASFA has a keen focus on matters that impact the outcomes achieved by individuals through the superannuation system, their experiences with the system, and issues that impede the industry's operational effectiveness.

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If you have any queries or comments in relation to our submission, please contact Sebastian Reinehr, ASFA Policy Director at [sreinehr@superannuation.asn.au](mailto:sreinehr@superannuation.asn.au) or on 0474 704 992.

Yours sincerely

James Koval  
Chief Policy & Advocacy Officer

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<sup>1</sup> Treasury, *Enhancing Member Protections in the Superannuation System: Consultation Paper (April 2026)*.

## Executive Summary and General Comments

ASFA welcomes the intention of the proposals put forward by Treasury in the consultation paper to strengthen the superannuation system, following the recent collapses of Shield and First Guardian.<sup>2</sup> According to the Treasury's estimates, these issues impacted over 11,000 Australians and \$1 billion in superannuation funds.<sup>3</sup>

We note that the proposals put forward in the consultation paper are intended to achieve the following overarching principles:<sup>4</sup>

1. Strengthening trustee governance
2. making switching superannuation safer
3. limiting or better protect advice-fee deductions from superannuation
4. requiring platform trustees to compensate members for some investment failures on their platforms.

ASFA agrees with the Minister for Financial Services, the Hon. Dr Daniel Mulino MP, that the issues raised by Shield and First Guardian require a strong response from the superannuation sector, as they:<sup>5</sup>

*[H]ave highlighted the need for a comprehensive reform package which responds to the ecosystem of alleged misconduct surrounding these failures.*

*This includes protecting consumers as they are navigating the superannuation system, tackling high-pressure sales tactics like lead generation and ensuring the sustainability of the Compensation Scheme of Last Resort.*

ASFA notes that the package put forward in the consultation regarding *Enhancing Member Protections in the Superannuation System* includes a series of proposals intended to achieve these ends.

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<sup>2</sup> Treasury, *Enhancing Member Protections in the Superannuation System: Consultation Paper* (7 April 2026).

<sup>3</sup> The Hon. Dr Daniel Mulino MP (Assistant Treasurer and Minister for Financial Services), *Strengthening consumer protection in the superannuation system and ensuring sustainability of the CSLR* (8 April 2026). See too Treasury, *Enhancing Member Protections in the Superannuation System: Consultation Paper* (April 2026) at 43.

<sup>4</sup> Treasury, *Enhancing Member Protection in the Superannuation System* (7 April 2026).

<sup>5</sup> The Hon. Dr Daniel Mulino MP (Assistant Treasurer and Minister for Financial Services), *Strengthening consumer protection in the superannuation system and ensuring sustainability of the CSLR* (8 April 2026).

ASFA's key recommendations include the following general principles:

Firstly, In relation to the idea of greater friction on the superannuation system, ASFA holds the following views:

- We acknowledge the Government's intent to explore friction, or 'sand in the gears' in relation to some transactions within super, where there is a reasonable suspicion or risk of fraud.
- We believe that members making informed choices about their superannuation savings should not be unduly restricted from moving their money.
- To that end, we would urge caution on proposals to introduce restrictions on the flow of superannuation moneys between APRA-regulated superannuation funds.
- We also believe that a member making an *informed* decision to switch into a Self-Managed Superannuation Fund (SMSF) should not be restricted from doing so.
- However we acknowledge and support in other papers the need to uplift communications in relation to SMSF obligations.
- With that principle in mind, our view is that safety should be uplifted across the sector and we support temporary measures to introduce friction on transactions between the APRA-regulated and ATO-regulated superannuation sectors.
- We also believe that, as outlined in detail in **Recommendations 12 to 15** of the paper, consideration should be given to whether friction is more appropriately applied at the start of the process of setting up an SMSF, through interactions with the ATO and financial advisers, stricter declaration requirements and other upstream interventions. This is preferable to the intervention only occurring when a member seeks to leave the fund.
- The upstream interventions proposed above would lead to a greater minimisation of the possible harms, with a significantly lower impact on the operational costs of superannuation funds.

Secondly, ASFA's view is that all trustees should be held to the same governance standards, whether they are platform or non-platform trustees. This ensures that regulatory gaps do not lead to consumer harm.

Thirdly ASFA does not support restrictions on the provision of financial advice within superannuation funds and does not support limits on advice fee deductions. The extent regulation of these matters is introduced, it should be done through regulatory guidance from ASIC and APRA, not codification in law.

Our detailed recommendations in relation to each of the specific proposals put forward above can be found in **Attachment A** of this submission.

## Attachment A – ASFA’s Detailed Recommendations and Comments

### Existing Obligations on Trustees and Arguments for Reform

As it outlined extensively in Treasury’s consultation paper, the APRA-regulated superannuation sector is already subject to extensive regulations to ensure members are protected from harm. These include: governance frameworks under the SIS Act, trustees duties, the covenants under section 52 of the Act, APRA’s directions powers, and prudential standards such as SPS 510, SPS 520 and SPS 530.<sup>6</sup>

In addition to the above, superannuation trustees are also subject to general obligations to:<sup>7</sup>

*[A]ct honestly, exercise care, skill and due diligence, and perform their duties and exercise their powers in the best financial interests of members.*

APRA-regulated trustees are also required to perform both initial and ongoing monitoring of investment options under SPS 530.<sup>8</sup>

It should be noted that there are some regulatory obligations which apply to non-Platform trustees that do not apply to Platform trustees. These include: the performance test, APRA reporting obligations in respect of product dashboards for *MySuper* products and ASIC’s RG 97.

Treasury has suggested that, notwithstanding that the ‘core obligations’ outlined above ‘apply to all trustees’, the emergence of Platforms may lead to a higher risk of ‘poor member outcomes’ because where it is the case that:<sup>9</sup>

*[P]latforms offer complex and potentially higher-risk products, and where governance practices are not sufficiently able to detect and respond to emerging issues in a timely way.*

### Recommendations – Principles for Reforming the Existing Regulatory Framework

**Recommendation 1** - Subject to the comments that ASFA makes in relation to specific proposals below, we wish to emphasise that:

1. The APRA-regulated sector is already subject to extensive regulation, designed to provide appropriate consumer protections, as acknowledged by Treasury and outlined in detail above.
2. Wherever possible, to avoid duplication or uncertainty, government and regulators should take the approach of enforcing the extensive laws that already regulate the relevant classes of conduct, rather than adding new legislation or regulation which covers broadly the same conduct.
3. Regulations should appropriately account for the relevant level of complexity and risk involved in the relevant product offerings.

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<sup>6</sup> Treasury, *Enhancing Member Protections in the Superannuation System: Consultation Paper (April 2026)* at 8-10.

<sup>7</sup> *Ibid* at 9.

<sup>8</sup> *Ibid* at 9.

<sup>9</sup> *Ibid* at 10.

## Defining Platform Trustees

Treasury engages in a detailed discussion of the appropriate definition of a Platform Trustee.<sup>10</sup>

They propose defining a “Platform Trustee” as the RSE licensee, that offers ‘one or more “Platform Products”’.<sup>11</sup>

A Platform Product is further defined as:<sup>12</sup>

*Superannuation products which allow members to construct a **bespoke superannuation portfolio**, by choosing directly from a **wide and diverse menu of investment options**, which offer a broad range of **member flexibility and exposure to specific investments**.*

This is distinguished from more traditional superannuation offerings, which Treasury refers to as:<sup>13</sup>

*[P]re-mixed trustee-directed options...[which] limit consumer choice to overall risk profiles and ethical preferences (for example, high-growth, sustainable) and as such pose significantly lower risks to consumers in terms of under-diversification and potential product failure*

In addition to these definitions, Treasury also proposes that Platform RSEs could be distinguished from non-Platform RSEs with reference to the ‘number’ and ‘type’ of investment options they offer.<sup>14</sup>

Treasury also expressly acknowledges that the definition could ‘carve out’ or ‘otherwise excluding’ products limited to pre-mixed, trustee directed options, focusing instead on products where members (or their advisers) can construct ‘bespoke portfolios’ by ‘selecting from a menu of specific investments’.<sup>15</sup>

## Recommendations on Definitions

**Recommendation 2** – ASFA questions if it is appropriate to define the terms ‘Platform Trustees’ and ‘pre-mixed, trustee directed product’.

- We are not convinced that these definitions are necessary given, as is outlined exhaustively above and acknowledged explicitly by Treasury, the relevant ‘core obligations’ do in fact already apply to ‘all trustees’.<sup>16</sup>
- This means that these obligations already apply across the board.
- We remain unconvinced that adding additional definitions would lead to stronger consumer protections. They may in fact cause greater confusion about where the boundary between Platform and non-Platform approaches lies.

**Recommendation 3** – Consistent with **Recommendation 1**, ASFA suggests that the approach to regulation should focus on the appropriate enforcement of existing laws, adding to these only where there is a clear case for change. Any new regulation should also be adopted in a manner which is business-model neutral.

**Recommendation 4** – We take the view that the principle expressed above, being that the same obligations should apply to all Trustees, is the appropriate framework. To the extent that obligations which currently apply to non-Platform trustees do not apply to Platform trustees, the relevant

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<sup>10</sup> Treasury, *Enhancing Member Protections in the Superannuation System: Consultation Paper (April 2026)* at 11-16.

<sup>11</sup> *Ibid* at 11.

<sup>12</sup> *Ibid*.

<sup>13</sup> *Ibid*.

<sup>14</sup> *Ibid*.

<sup>15</sup> *Ibid* at 13.

<sup>16</sup> *Ibid* at 10.

obligations which apply to Platforms should be increased to meet the existing standards for all other trustees.

### **Proposal 1.1 - Requirements to set and enforce holding limits for investment options<sup>17</sup>**

**Recommendation 5** – ASFA opposes Proposal 1.1. for the following reasons:

- ASFA Treasury acknowledges, under both the SIS Act and SPS 530, Trustees already have an obligation to conduct both initial due diligence of investment options and also ongoing oversight and monitoring.<sup>18</sup>
- This includes an obligation to ensure that ‘effective due diligence’ is undertaken which is ‘commensurate with the nature and characteristics of the investment’.<sup>19</sup>
- These obligations already apply to both Platform and non-Platform RSEs.<sup>20</sup>
- In times of high volatility or uncertainty, superannuation fund members may choose to go into concentrated options which they perceive to be low risk, such as cash or gold.
- To the extent that concern exists around investment holdings, it should be addressed through greater enforcement of the existing obligations in SPS 530, acknowledging the legitimate role of consumer choice in product selection, so long as they are making informed decisions.
- ASFA recommends that, to the extent Proposal 1.1. is adopted, it should be done through appropriate updates to SPS 530 and not through legislation.

### **Proposal 1.2 - Codification of due diligence requirements<sup>21</sup>**

**Recommendation 6** – Subject to the below, ASFA recommends that this would be preferable to Proposal 1.1. However, we also note:

- The due diligence requirements should be enshrined via regulatory guidance, not in legislation.
- They should be consistent with the obligations on other APRA-regulated RSEs, as outlined above.<sup>22</sup>

### **Proposal 1.3 - Limitations on certain conflicted arrangements and payments<sup>23</sup>**

**Recommendation 7** – ASFA supports these proposals. We note that similar restrictions on conflicted remuneration apply in other parts of the superannuation ecosystem, such as in relation to financial advice following the Future of Financial Advice (FOFA) reforms to the Corporations Act in 2012.<sup>24</sup> SPS 521 also places obligations on trustees in relation to managing conflicts of interest.

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<sup>17</sup> Treasury, *Enhancing Member Protections in the Superannuation System: Consultation Paper* ([April 2026](#)) at 17-19.

<sup>18</sup> *Ibid* at 9.

<sup>19</sup> *Ibid*.

<sup>20</sup> *Ibid* at 10.

<sup>21</sup> *Ibid*.

<sup>22</sup> *Ibid* at 9.

<sup>23</sup> *Ibid* at 20-21.

<sup>24</sup> ASIC, *Future of Financial Advice (FOFA) reforms* (accessed in [May 2026](#)).

#### Proposal 1.4 - Restricting certain trustee operating models<sup>25</sup>

**Recommendation 8** – As a general principle, ASFA does not support banning particular operating models. However, we do acknowledge that licensees need to ensure there are appropriate governance and oversight practices in place to ensure rigorous consumer protections. Therefore we note that, in the context described above, it must be made clear that:

- Outsourced trustees remain, in Treasury’s words, ‘accountable for member outcomes’.<sup>26</sup>
- The Financial Accountability Regime (FAR) continues to apply to these operating models.<sup>27</sup>

Notwithstanding the above, ASFA does acknowledge that, to the extent deficiencies are identified in the independent trustee model, appropriate reforms should be made to address these.

#### Proposal 2.1 and 2.2 on Increasing the Maximum Penalties Under the SIS Act<sup>28</sup>

The proposals in this section of the consultation paper suggest increasing the maximum penalties under the SIS Act.

Currently, under the civil penalty provision contained in section 196 of the SIS Act, the maximum penalty for a breach of a civil penalty provision, including a covenant contained in section 52 of the Act, is 2,400 penalty units or \$792,000.<sup>29</sup>

The proposals in the consultation paper would either:

1. Double the current penalties in the SIS Act, increasing them to \$1,584,000; OR
2. Seek to ‘better align’ maximum penalties with the Corporations Act.

While the consultation paper does not specify a maximum penalty amount under this Option, the maximum penalty is \$825 million.

**Recommendation 9** - ASFA opposes both options for increasing the maximum penalties under the SIS Act because:

- We note that the vast majority of the funds held by superannuation funds are held in trust for members of the fund and are not operational reserves, The argument in the consultation paper that the current penalties are ‘immaterial relative to funds under management’ does not address this crucial fact.<sup>30</sup>
- A significant majority of Australian superannuation funds are run by profit-to-member entities. This means that any increased costs through higher penalties would ultimately harm fund members.
- Higher penalties would have the potential to increase costs to fund members in the long-run.
- The upper end of aligning penalties with the Corporations Act would see the maximum penalty increase from \$792,000 to \$825 million, which seems to be a disproportionate increase.

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<sup>25</sup> Treasury, *Enhancing Member Protections in the Superannuation System: Consultation Paper (April 2026)* at 21-23.

<sup>26</sup> Ibid.

<sup>27</sup> Ibid.

<sup>28</sup> Treasury, *Enhancing Member Protections in the Superannuation System: Consultation Paper (April 2026)* at 20-21.

<sup>29</sup> Ibid at 23.

<sup>30</sup> Ibid.

- There has already been a significant effective increase in the value of penalties under the SIS Act since 2020 from \$504,000 to \$792,000 (an over 57 per cent increase in just six years). This is because in that time the value of Commonwealth penalty units has increase from \$210 to \$330.<sup>31</sup>

### **Proposal 3.1 and 3.2 – Applying Waiting Periods to All or Some Inter-fund switches**<sup>32</sup>

**Recommendation 10** – ASFA opposes any proposal that would apply waiting periods to all inter-fund switches that occur entirely within the APRA regulated system.

- Imposing waiting periods on interfund transfers within the APRA-regulated system would lead to a significantly increased administrative burden on superannuation funds to implement.
- It is also unlikely to significantly increase protection for member, who may still be likely to make the switch anyway.

**Recommendation 11**- Consideration may be given by the Government to applying some form of waiting period to switches where funds are leaving an APRA-regulated superannuation fund to enter a Self-Managed Superannuation Fund (SMSF).

**Recommendation 12** – In addition to the above, there may be a need for further upstream interventions in relation to SMSFs, prior to APRA-regulated funds having a role.

- For example, it is not appropriate that APRA funds to be the main protection from poor practices that make SMSFs the gateway to loss.
- A more coordinated approach is required to ensure individuals moving into SMSFs clearly understand, accept and can manage the responsibilities and risks they are taking on.
- To be more effective, interventions should also occur earlier on in the process e.g. when an individual is registering an SMSF with ATO or on becoming SMSF member.
- The role of financial advisers in establishing SMSFs should also be considered in this context, including how they could be utilised to better ensure individuals fully understand the risks involved.
- Consideration could also be given to more significant trustee declaration requirements being introduced when an individual is establishing an SMSF.
- It is at those real decision points that the intervention needs to occur.

**Recommendation 13** – The Government may also wish to consider some form of warnings being issued to the member before they confirm their desire to leave an APRA regulated fund.

- The text of this warning should be approved by APRA or ASIC and indicate to the member that, if they leave the APRA-regulated environment, they acknowledge that they may be subject to fewer protections.
- This warning should include notice that, absent misconduct by a financial adviser, they may be unable to avail themselves of the Compensation Scheme of Last Resort (CLSR) and will take on new obligations regarding the investment decisions, risk and operation of their super fund.

<sup>31</sup> ASIC, *Fines and Penalties* (accessed [May 2026](#)).

<sup>32</sup> Treasury, *Enhancing Member Protections in the Superannuation System: Consultation Paper* ([April 2026](#)) at 30.

- Standardised text and warnings could be adopted by ASIC, especially in relation to lead generators and suboptimal advice practices. Consideration should be given to ASIC’s existing warnings in this space.<sup>33</sup>

**Recommendation 14** – When considering what products waiting periods and warnings should be applied to, Treasury should have regard to the ‘complexity’ of the relevant products in question.

**Recommendation 15** – ASFA also wishes to emphasise that, if friction is used, it should be able to utilise all forms of technology, including electronic processing, not just paper-based mechanisms or phone calls.

#### Proposal 4.1 Prohibiting fee deductions for switching-related financial advice

**Recommendation 16** – ASFA opposes prohibiting fee deductions for switching related financial advice. We note that ASIC has provided extensive guidance for trustees on how to appropriately manage these matters at an entity-based level through funds’ own internal policies.<sup>34</sup>

- We further note that, as acknowledged by Treasury, trustees may apply a ‘risk based’ approach to advice fee deductions, noting their obligations in relation to the Sole Purpose Test (SPT) and the Best Financial Interests Duty (BFID).<sup>35</sup>

#### Proposal 4.2 - Codification of obligations on receiving funds to review advice fee deductions<sup>36</sup>

**Recommendation 17** - In relation to Proposal 4.2, ASFA suggests the following:

- Consistent with the principles expressed in **recommendation 1** of this submission, ASFA recommends that a key principle of reform should be that wherever possible, to avoid duplication or uncertainty, government and regulators should take the approach of enforcing the extensive laws that already regulate the relevant classes of conduct, rather than adding new legislation or regulation which covers broadly the same conduct.
- To that end, the 2021 joint APRA and ASIC letter to trustees on oversight of advice fees charged to members' accounts set out detailed expectations on trustee policies, adviser onboarding, risk-based file sampling and fee oversight. Rather than codify existing obligations, a simple approach would be to incorporate this letter into ASIC regulatory guidance.<sup>37</sup>

#### Proposal 5.1 – A new obligation on ‘Platform Trustees’ to compensate members for eligible losses<sup>38</sup>

**Recommendation 18** - In line with the principles expressed in **Recommendation 1**, ASFA recommends that Platform trustees should have the same obligations as non-Platform trustees, and any differentiation should be based on the complexity and risk involved in the relevant business model or product offering.

**Recommendation 19** – ASFA supports an approach to remediation which is based on the principles outlined in ASIC’s RG 277, requiring remediation to be ‘proactive’ and ‘effective’, in cases where the loss occurred ‘as a result of the licensee’s misconduct or other failure’.<sup>39</sup>

<sup>33</sup> ASIC, Moneysmart, ‘Protect Your Super from Pushy Sales Calls’ (accessed [May 2026](#)).

<sup>34</sup> ASIC, Rep 781 Review of superannuation trustee practices: Protecting members from harmful advice charges (May 2024).

<sup>35</sup> Treasury, *Enhancing Member Protections in the Superannuation System: Consultation Paper* ([April 2026](#)) at 40.

<sup>36</sup> *Ibid* at 40-43.

<sup>37</sup> ASIC, Letter to all RSE Licensee on Further guidance on oversight of advice fees charged to members’ superannuation accounts ([30 June 2026](#)).

<sup>38</sup> Treasury, *Enhancing Member Protections in the Superannuation System: Consultation Paper* ([April 2026](#)) at 49.

<sup>39</sup> ASIC RG 277.11.

- We suggest that this principle is consistent with that put forward in **Recommendation 5** regarding trustees existing obligations in relation to initial and ongoing investment due diligence.<sup>40</sup>

**Recommendation 20** – To the extent that some trustees may have more complex offerings, insofar as they offer a broader menu of options to their members, they should have appropriate arrangements in place to remediate members.

- The exact arrangements may differ based on a relevant trustees precise level of complexity in their product offerings, risk levels or business models.
- These characteristics may impact the most appropriate approach to remediation, such as through risk reserves or insurance.
- However, traditional trustees with simpler, low complexity offerings should not be subject to additional requirements.

#### **Proposal 5.2 – ASIC Directions Power (Remediation)**<sup>41</sup>

**Recommendation 21** - ASFA opposes the proposed new ‘directions power’ being granted to ASIC for Platform trustees specifically.

- While ASFA supports the existing framework outlined in ASIC’s RG 277, which emphasises the importance of remediation being ‘proactive’ and ‘effective’.
- ASFA recommends that the application of this approach should have regard to the complexity and risk involved in relevant trustees product offerings or business models.
- In this context, regard should also be had to the general obligations on ASIC regulated licensees, in section 912A of the Corporations Act, to act ‘efficiently, honestly and fairly’. This can already provide impetus for remediation.<sup>42</sup>

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<sup>40</sup> Treasury, *Enhancing Member Protections in the Superannuation System: Consultation Paper* ([April 2026](#)) at 9.

<sup>41</sup> *Ibid* at 54.

<sup>42</sup> ASIC, AFS Licensees (accessed [May 2026](#)).