

In this issue:

[APRA draft conflicts of interest guide](#)

[APRA further draft prudential guides](#)

[Defined benefit regulations](#)

[Australia compares well in global super fee study](#)

APRA draft conflicts of interest guide

The draft Superannuation Prudential Practice Guide – SPG 521 – Conflicts of Interest is a new publication issued by the Australian Prudential Regulation Authority (APRA) which consolidates APRA’s views in respect of good practice for a Registered Superannuation Entity (RSE) licensee and its directors in the management of conflicts of interest in order to satisfy relevant legislative requirements.

These include the statutory covenants in section 52 of the Superannuation Industry (Supervision) Act 1993 (SIS Act) (in particular the covenants to act in the best interests of beneficiaries and to exercise care, skill and diligence), the common law fiduciary obligations of trustees, and the general duties of company directors, including directors of corporate trustees, under the Corporations Act 2001.

This table lists APRA’s recommendations to satisfy those obligations.

Obligations	Recommendations
Identifying and monitoring potential conflicts of interest	
The conflicts of interest policy would contain appropriate measures to identify and monitor potential conflicts of interest.	1. Ensure, including through training, that RSE licensee directors clearly understand:
	(i) The circumstances that may give rise to conflicts of interest
	(ii) the content and purpose of the RSE licensee’s conflict of interest policy
	(iii) the legal obligations of a trustee director, including the need to disclose all interests
	(iv) the need to robust processes for on-going identification and monitoring of conflicts, recognising that changed circumstances can rapidly convert a potential conflict into an actual conflict even when a potential conflict had not been previously identified.
	2. Appointment procedures that require incoming RSE licensee directors or individual trustees to disclose all interests or circumstances that may give rise to a conflict of interest.
	3. Maintaining an up-to-date register of the relevant financial interests and other relevant fiduciary roles of the RSE licensee and of each RSE licensee director or individual trustee.
	4. Regular and reasonable enquiry of service providers, including professional advisers, by the RSE licensee as well as processes to require service providers to declare, both at the time the service contract is first negotiated and throughout the life of the service contract, any conflicts of interest that do or may arise in the provision of the service.

Obligations	Recommendations
Avoiding or managing actual conflicts of interest	
The conflicts of interest policy developed under the Risk Management Strategy would typically consider measures to identify and avoid or manage actual conflicts of interest	1. A procedure to evaluate and avoid or manage actual conflicts that have been identified to ensure that when making decisions, the exercise of independent judgement in the best interests of beneficiaries is not compromised:
	(i) avoidance strategies may be appropriate where it would not be in the best interests of beneficiaries for the actual conflict to persist and management strategies are insufficient to demonstrate the exercise of independent judgement.
	2. A practice of recording in the minutes of RSE licensee board and board committee meetings details of actual conflicts identified and the action taken to avoid or manage them, including whether legal advice was obtained to assist in management or avoidance of the conflicts.
	3. A procedure to demonstrate consideration on the part of the RSE licensee of whether material actual conflicts of interest in relation to an existing or prospective service provider or professional adviser make appointment or retention of the service provider inappropriate.
	4. In circumstances of actual conflict, where the RSE licensee is reasonably satisfied that the appointment or retention of an existing or prospective service provider is warranted, processes (for example, an independent assessment) to demonstrate that the quality of service and fees charged are no less favourable to the beneficiaries than would be the case if the services were to be provided by an 'arm's length' provider.
	5. In circumstances where a conflict is managed by disclosure, processes to demonstrate that the disclosure has occurred and there is on-going evaluation of management of the conflict and escalation for alternative action if required.

The above recommendations are provided for guidance. APRA indicates that it is open to RSE licensees to adopt alternative processes to identify and monitor potential conflicts of interest faced by the licensee, its directors and service providers, if the alternative processes achieve, at a minimum, the same outcomes.

Source

Australian Prudential Regulation Authority, APRA consults on conflicts of interest guide for super funds, 3 April 2009.

http://www.apra.gov.au/media-releases/09_07.cfm

APRA further draft prudential guides

APRA has released draft guidance on a number of prudent practices for APRA-regulated superannuation trustees:

- draft Superannuation Prudential Practice Guide – SPG 110 – Capital;
- draft Superannuation Prudential Practice Guide – SPG 200 – Risk Management;
- draft Superannuation Prudential Practice Guide – SPG 230 – Adequacy of Resources; and
- draft Superannuation Prudential Practice Guide – SPG 520 – Fitness and Propriety.

The aim of the four prudential practice guides is to address measures that might be employed by a trustee and its directors to satisfy obligations imposed under legislated licence conditions, various operating standards and other provisions under the SIS Act and its regulations.

APRA proposes to issue a final version of each of the guides later in 2009 which will replace the current Superannuation Guidance Notes and information previously contained in 'Frequently Asked Questions' prepared in the context of the licensing of superannuation trustees, as well as the earlier Superannuation Circulars.

The table below lists APRA's new recommendations to the current guidance to satisfy those requirements.

APRA draft guidance	Recommendations
Draft SPG 110 - Capital	
	Where fund administration is undertaken in-house, trustees to hold an indicative minimum amount of \$250,000 in liquid assets by way of licence condition.
	Any new entrant to trustee operations applying for a public offer licence and using the custodian conditions to meet the capital requirements of s. 29DA of the SIS Act and to have at least the minimum amount of \$100,000 in liquid assets.
Draft SPG 200 – Risk management	
Risk management framework and trustee operations	Trustees to consider whether security considerations may preclude some components of the RMS, such as the fraud control plan, being included in the RMP and therefore available to members.
	Trustees to use a well-structured process to identify and assess risks, possibly with the aid of a facilitated risk workshop.
	Trustees to identify any areas of potential conflicts of interest, minimise, monitor and review them (i.e. segregation of duties).
	Trustees to consider risks associated with remuneration structures, both for executives and for investment managers, which may skew their risk appetite towards higher but unsustainable short term outcomes which may be inimical to the interests of long term fund members.
	Trustees to consider risks associated with benefit design, including: <ul style="list-style-type: none"> ↳ the investments underpinning any explicit or implied capital guarantee offered to members; ↳ the potential for members to benefit from arbitrage opportunities if unit prices or crediting rates for members switching between investment strategies are set using historic rather than forward pricing; and ↳ for defined benefit funds, risks to the financial position of the fund, which will include risks associated with the solvency of an employer sponsor as well as those associated with the investments supporting the fund’s defined benefit liabilities.
	Trustees to consider valuation risk, including: <ul style="list-style-type: none"> ↳ the risks that the frequency of valuation is inconsistent with the frequency of establishing crediting rates or unit prices, giving the opportunity for arbitrage; ↳ the risk of incorrect valuation of assets for which there is not a deep or liquid market; and the risk of incorrect assessment of the tax implications associated with particular assets.
	Risk register to include: <ul style="list-style-type: none"> ↳ assessment of the inherent impact and likelihood; ↳ identified risk mitigation and control; ↳ strategies; ↳ assessment of the effectiveness of the control strategies in place; ↳ assessment of the residual risk; and ↳ decision as to whether or not to accept that risk.
	RMS and RMP to explicitly indicate the trustee’s risk appetite both in the aggregate, and at the individual risk level.
	RMS and RMP to contain sufficient information to enable the reader to understand in general terms how the trustee identifies, mitigates, manages, monitors and regularly reports on the risks to its own operations and those of the entities for which it is trustee, respectively.
	Risk management framework to be developed and reviewed within the context of the trustee’s business planning processes.
Trustees to give consideration to issues of business resilience (i.e. the capacity of the organisation to adapt to and conceivably benefit from significant events which materially change the business operating environment).	

APRA draft guidance	Recommendations
	<p>Trustees to consider processes for project management including transitions when functions are moved between in-sourced and outsourced arrangements, or between outsourced service providers;</p> <p>Risk register to incorporate the risk management controls relevant to each identified risk, including:</p> <ul style="list-style-type: none"> ↳ identification of the officer responsible for implementing those controls; ↳ an assessment of the control effectiveness; and ↳ an assessment of the likelihood and impact of the residual risks.
Information systems	<p>Controls to be in place for ensuring that data in information and reporting systems are timely, accurate and complete.</p> <p>Trustees to establish, maintain and document effective management information systems commensurate with the size and complexity of its operations as part of a trustee’s risk management framework.</p>
Escalation procedures	<p>Escalation procedures to be established as part of a trustee’s risk management framework to facilitate the reporting of risk issues.</p>
Derivatives	<p>RMP to detail the trustee’s requirements in relation to the use of derivatives, whether directly or in pooled investments, and management of derivative risk.</p> <p>Trustee to determine whether a Derivative Risk Management Statement is required and if so whether it should be prepared separately from the RMP, or whether it could be incorporated within the RMP.</p> <p>Such a decision to be formally considered and documented by the trustee.</p> <p>Derivatives</p> <p>Trustees not to use derivatives for ‘speculation’, defined for the purposes of this SPG to mean investment activity which results in one or more of the following:</p> <ul style="list-style-type: none"> ↳ the net exposure of the fund to an asset class being outside the limits set out in the fund’s investment strategy. (Net exposure is exposure taking account of both physical and derivative exposure); ↳ the risk involved for the whole portfolio being outside that which the trustee considered appropriate when it developed and approved the fund’s investment strategy; ↳ the fund holding uncovered derivatives; and ↳ the fund’s total portfolio being ‘geared up’ through derivatives to circumvent the limitations imposed by ss. 67, 95 and 97 of the SIS Act on borrowings.
Audits	<p>Trustees to have due regard to the audit reports and the issues arising so that they are fed back into the review of risks and mitigants on an ongoing basis.</p> <p>Clear methodology to be set up for determining the scope and frequency of the internal audit of all elements of the risk management framework.</p>
Draft SPG 230 – Adequacy of resources	
	<p>RMS to set out how trustees will monitor and maintain the adequacy of resources available to it.</p> <p>Trustees to substantiate evidence of appropriate due diligence which supports the trustee’s satisfaction with the capacity of material service providers including satisfaction with:</p> <ul style="list-style-type: none"> ↳ their financial capacity to remedy any failings in providing the contracted services; and/or ↳ Agreements under which an employer sponsor or other party commits to providing on-going material support to the trustee. <p>When operations are conducted in-house, trustees to demonstrate appropriate recruitment and induction processes, as well as succession planning roles.</p>

APRA draft guidance	Recommendations
Draft SPG 520 – Fitness and propriety	
	<p>Trustees' Fit and Proper Policy to:</p> <ul style="list-style-type: none"> ↳ include adequate provisions to allow whistleblowing if a person believes that a responsible person, or the trustee, did not meet the criteria of that policy; ↳ formalise the consent of the trustee, its parent or subsidiaries as relevant, to the whistleblower notifying either the person responsible for conducting fit and proper assessments or APRA of that belief and the reasons for it, notwithstanding any other conditions of their employment or contract; ↳ reiterate anti-victimisation procedures in place to ensure whistleblowers are not deterred; ↳ provide that the trustee, its parent or subsidiaries as relevant, consented to any person who held a responsible person position disclosing information or providing documents to APRA at any time relating to their reasons for resignation, retirement or removal; and ↳ ensure that any provisions of the policy facilitating whistleblowing are adequately communicated to directors, responsible officers and other employees of the trustee and its related entities. <p>RSE licensee to ensure that its related companies do not, constrain, impede, restrict or discourage, whether by confidentiality clauses, policies or other means, any person from disclosing information or providing documents to APRA.</p> <p>All officers of an RSE licensee to possess appropriate skills, knowledge and qualifications to carry out their appointed roles in order to meet the fitness standard. Minimum requirements for all responsible officers of an RSE licensee to include:</p> <ul style="list-style-type: none"> ↳ an understanding of and ability to effectively implement the covenants outlined in section 52 of the SIS Act; ↳ a working knowledge of the SIS legislation and other relevant prudential requirements, including accounting, auditing and operational processes; ↳ basic investment knowledge; ↳ basic knowledge of the elements and application of other RSE licensee and trust law; and ↳ awareness of areas where additional technical, professional or expert advice should be sought.

Source

Australian Prudential Regulation Authority, APRA releases further draft guidance for superannuation trustees, 14 August 2009.

http://www.apra.gov.au/media-releases/09_24.cfm

Defined benefit regulations

Following the 2009/10 Budget announcement, concessional contributions caps have been reduced as follows:

- ↳ a reduction of the concessional superannuation contributions cap from \$50,000 to \$25,000 (indexed) for the under 50 years old for the 2009-10 financial year.
- ↳ a reduction of the transitional concessional contributions cap from \$100,000 to \$50,000 (not indexed) for those aged 50 years old or older for the 2009-10 to 2011-12 financial years.

As a result of the reduction in the concessional contributions caps, the *Income Tax Assessment Regulations 1997* (the regulations) have been amended to provide transitional arrangements to certain members of defined benefit funds.

Contributions made into defined benefit funds are not always linked to individual members. The concessional contributions amount for a member of a defined benefit fund is not calculated on the actual contributions made to the fund but on 'notional taxed contributions'. The notional taxed contributions are the contributions that are determined by the trustee to be notional taxed contributions, using the method set out in Schedule 1A of the regulations.

The new regulations provide that notional taxed contributions exceeding the concessional contributions cap will be treated as though they are equal to the cap, provided certain conditions are met (s 292-170.05).



This means that a member will not be liable for excess contributions tax on these contributions if the conditions are met.

The transitional arrangements only apply if a member was a member of a defined benefit fund on 5 September 2006 (s 292-170.05).

A condition to the transitional arrangements is that between 5 September 2006 and the time at which the new entrant rate for the defined benefit member is calculated, the rules of the superannuation fund have not changed to improve the member's benefit (s 292-170.05 (2)(a)).

However particular changes to the rules will still allow the transitional arrangements to continue, for example if the change relates to the method of calculating superannuation salary that increases a benefit as a result of a change that is made to satisfy the requirements of the *Superannuation Guarantee (Administration) Act 1992* ((s 292-170.05 (4)(b)).

A member can transfer from a defined benefit fund to another defined benefit fund and still may be entitled to transitional arrangements, only if the member has moved to a new benefit category that does not provide the member with an improved level of benefit (s 292-170.05 (2)(b)(ii)). Provided that this requirement is met, the member may retain the transitional arrangements in the new fund.

Please refer to the link from the ATO for further details: <http://www.ato.gov.au/superfunds/content.asp?doc=/content/00094535.htm>.

Source:

Income Tax Assessment Regulations 1997

[http://fedlaw.gov.au/ComLaw/legislation/legislativeinstrumentcompilation1.nsf/0/D0516AA4A610DA5FCA2575F500827D02/\\$file/IncomeTaxAssessment1997.pdf](http://fedlaw.gov.au/ComLaw/legislation/legislativeinstrumentcompilation1.nsf/0/D0516AA4A610DA5FCA2575F500827D02/$file/IncomeTaxAssessment1997.pdf)

The Australian Taxation Office, Defined Benefit funds, 7 July 2009.

<http://www.ato.gov.au/superfunds/content.asp?doc=/content/00094535.htm>

The Australian Taxation Office, Changes to super for individuals, 2 July 20093

<http://www.ato.gov.au/individuals/content.asp?doc=/content/00200258.htm>

Australia compares well in global super fee study

A recent global study undertaken by Deloitte Actuaries and Consultants on behalf of Australia's Investment & Financial Services Association (IFSA) reveals that the fees charged by Australia's largest superannuation funds compare well against the more competitive funds in the world.

The study was undertaken so that forums such as the Cooper Review are aware of the significant strengths in Australia's superannuation system.

In addition, the study shows that there is still plenty of room for efficiency gains in Australia by adopting improvements in automation and the elimination of duplicate accounts in the superannuation system.

To read the full press release, download the attachment below:

http://www.deloitte.com/view/en_AU/au/news-research/media-releases/press-release/0013353b45304210VgnVCM200000bb42f00aRCD.htm

Source

Deloitte, Australia compares well in global super fee study, 28 September 2009.

http://www.deloitte.com/view/en_AU/au/news-research/media-releases/press-release/0013353b45304210VgnVCM200000bb42f00aRCD.htm

aonmastertrust.com.au

The information in this factsheet is general in nature. Your personal objectives, financial situation or needs were not taken into account when preparing this information. You may want to seek independent advice before making any decisions about your super. This factsheet was prepared by Aon Consulting Pty Limited (ABN 48 002 288 646, AFSL 236667) and issued by Aon Superannuation Pty Limited (ABN 83 057 982 822, AFSL 237465) as trustee for the Aon Master Trust (ABN 68 964 712 340). © 2009 This work is copyright. Apart from any use permitted under the Copyright Act 1968, no part may be reproduced by any process nor may any other exclusive right be exercised without the permission of Aon Consulting Pty Limited.