SUPER SYSTEM REVIEW
FINAL REPORT

CHAPTER 6
Integrity of the system

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CONTENTS

KEY THEMES

Issue

The integrity of the superannuation system is important in maintaining certainty that retirement benefits will be delivered to Australians. Confidence that the industry is stable and that savings are secure must be upheld. While no fundamental flaws have been identified, the Panel believes that improvements can be made in several areas so as to ensure that risks are appropriately monitored and confidence is maintained.

Proposed solution

The Panel proposes measures, including:

- requiring all trustees to have a risk-weighted amount of capital or an operational risk reserve;
- administrators and commercial clearing houses to be licensed by APRA;
- liquidity risks to be specifically addressed in the trustee's RMP; and
- funding of defined benefit funds to focus on coverage of vested benefits, not coverage of minimum requisite benefits.

Benefits for members

Members will benefit from these measures to improve the integrity of the system as:

- capital and reserve requirements will help ensure the viability of trustees as will APRA licensing of administrators and commercial clearing houses;
- liquidity risk will be managed better so that members have access to benefits when they need them;
- more security for defined benefit fund members as vested benefits become the focus in funding; and
- improved confidence in the integrity and stability of the system.

1 INTEGRITY OF THE SUPER SYSTEM

In order for the superannuation industry to make an optimal contribution to retirement savings, fund members must have confidence in the industry's stability and the security of their savings. Capital adequacy and liquidity are key structural elements supporting those aims in respect of APRA-regulated funds.

1.1 Capital adequacy

A feature of the superannuation system is that there has not been a high threshold for entry. This means that non-public offer funds can be established with zero capital backing, and even many public offer trustees hold minimal capital in their own right.

Trustees of public offer super funds are required to meet a minimum capital requirement. Currently, trustees must have net tangible assets of $5 million or that amount available under an approved guarantee (or a combination of the two), comply with conditions regarding the custody of the assets of the fund or hold all the fund's assets in a prudentially regulated entity. Trustees may also be required to be licensed by ASIC, but need only comply with APRA capital requirements.

An approved guarantee can only be called on in the event of a default by the trustee to whom it is provided, so it is far less flexible in responding to any stress situation than having tangible assets available.

The custody alternative referred to above requires that the assets of the fund are held by a custodian with at least $5M in net tangible assets. Custodians hold assets and execute market transactions on behalf of trustees. Trustees who outsource this service do so to minimise the risks of transactional errors, as custodians have large back office operations to support a high volume of market transactions. This provides some additional security for trustees (and members) against the risks of transaction errors, valuation errors and fraud. However, custodians provide no protection to fund members in the event of operational failure on the part of the trustee or another service provider, or any security in relation to fund assets held in downstream investments.

Custodians can hold assets for many funds, but the minimum capital requirement is not correspondingly increased if a custodian holds assets for more than one fund. Capital available from custodians only provides protection for fund members against operational risks arising from custody-related problems, but does not protect against other risks.

In practice, custodians act as a conduit for the trustee's decisions and it is not their role to conduct due diligence to protect against a range of investment-related risks.

At present, even for public offer funds, there is no link between the risks faced by the fund and the amount of capital required. For example, the capital requirements for a public offer trustee would be the same whether the trustee acts for one Small APRA Fund (**SAF**) or for many large defined benefit funds. When there are losses as a result of an operational error (which are not recoverable from third parties, including insurers), those losses must be met from the fund. In other words, the members suffer the losses.

The original thinking behind the $5M capital backing required for public offer superannuation trustees was '*so that only companies of substance can be trustees of public offer superannuation funds*'.[1] The capital requirement was intended to ensure that some financial resources are available to act as a buffer against risk, demonstrate a commitment on the part of the trustee to its superannuation business, and act as an incentive to the trustee to manage the fund well. However, it has not been increased since the inception of the SIS Act in 1993, despite the average size of large APRA funds having increased from $46M to $2B from June 1996 to December 2009.[2]

A high proportion of public offer trustees meet their capital requirements through using a custodian, rather than holding capital in their own right, as shown in the following table.

Table 6.1: How funds meet capital requirements

RSE Licensees at 15 April 2010			
Method of meeting Capital Requirements	**Extended Public Offer**	**Public Offer**	**Aggregate Total**
$5M net tangible assets in own right	6	31	37
$5M approved guarantee	3	6	9
Custodian	8	55	63
Invested in prudentially supervised institution	-	2	2
Total	**17**	**94**	**111**

Source: APRA unpublished data

There are not many professional custodial services in the market so there is a high concentration in a few providers.

The interests of members can be adversely affected by risks arising out of the fund's operations, which may relate to the governance of the fund, the fund's business processes or its employees. These can include conflicts of interest or duty (or both) among the trustee-directors; poor selection and monitoring of external service providers; inadequate insurance; failure to meet compliance obligations; damage to member records; computer failure; failure of software to perform to expectations; fraud, negligence and misconduct; miscalculation of member benefits such as unit pricing errors; and loss of key staff.

While it might be argued that a consistent cash flow from contributions provides a resource from which trustees can respond to a crisis, it is no substitute for capital or a dedicated reserve. In a choice environment, contributions might cease and requests for rollovers multiply in precisely those circumstances when the trustee has greatest need for cash flow.

The Panel is aware of instances of operational error in superannuation funds that have cost many tens of millions of dollars to rectify, principally relating to unit pricing errors. Rectification has been achieved at no cost to members because of the financial strength of the financial services groups of which the trustee formed part, where the groups made a commercial (rather than externally imposed) decision to compensate fund members, notwithstanding the lack of capital directly available to the trustee.

For funds with non-capitalised trustees, if anything goes wrong, the members bear the loss if the matter is not covered by indemnity insurance and if a third party is not liable for the event, giving rise to significant equity and inter-generational issues.

In its response to the 2002 report of the Working Group on Improving the Safety of Superannuation, the then Government said:

> *"The Government supports in-principle a risk sensitive framework for the holding of capital to address operational risk, but considers that the combination of requirements that each trustee be licensed by APRA, and prepare a risk management plan, will substantially address concerns relating to operational risk. Arguably the need for capital in the future may be substantially reduced as other factors come into play to address operational risk. On this basis, the Government supports the retention of the status quo for capital requirements at this time, to be revisited once the impact of the licensing and [risk management] reforms can be assessed."*[3]

The Panel believes that the current arrangements concerning capital requirements are inadequate.

There has been significant industry consolidation since the introduction of licensing, and the risk management processes have become more robust, albeit off a low base. The increased size of funds, while delivering economies of scale, tends to concentrate risk. There is an argument that MySuper and SuperStream should mitigate some of these risks, but not sufficiently, in the Panel's view, to eliminate the need to revisit the question of capital requirements.

1.2 Operational risk reserves

Factors that have led to increased operational risk include the provision of more complex superannuation product offerings; greater flows of funds due to the introduction of choice of fund and the growth in member investment choice; more widespread adoption of daily unit pricing; and a general increase in the number of external service providers that many trustees must monitor.

Many trustees already maintain operational risk reserves in their funds even though they are not legally required to do so. These reserves form part of the assets of the fund, but are set aside for the specific purpose of addressing operational risks such as fraud, pricing errors or system failure. Earnings on the reserve may be directed either to building the size of the reserve or distributed to members. If a reserve is maintained, the SIS Act requires trustees to formulate and give effect to a strategy for its prudential management. Trustees must also consider a range of issues, including the:

- intergenerational equity of the reserve, which will typically act to spread costs across different 'generations' of fund members;
- appropriate levels or range of the reserve;
- controls and procedures for managing the reserve; and
- the manner of distribution if the reserve is no longer required, typically in the event of fund wind-up or merger.

In the event of the catastrophic failure of a fund, internal reserves provide less assurance than would capital held outside the fund by the trustee. However, the Panel's view is that losses of such magnitude as to wipe out fund assets, including its risk reserves, are of sufficiently low probability that the possibility should not distort its recommendations concerning capital.

Mercer did a study in April 2009 on trustees' attitudes to operational risk reserves aimed at compensating members in the event of an operational risk event such as fraud, pricing errors or system failure. The study surveyed 34 super fund trustees, representing 40 per cent of fund assets in the not-for-profit sector. Mercer found that smaller funds, that should arguably have a relatively larger reserve, were less likely to have one. Just over half of the trustees surveyed had either a specific operational risk reserve or a general unallocated reserve. Typically, the level of the reserve was between 0.2 per cent and 0.6 per cent of assets or liabilities.

Mercer recommends that an operational risk reserve should be at least 1.25 times the cost of a fund's annual operations, plus extra for provision of services from an external source in the event of a major problem.[4]

APRA has released for industry consultation a discussion paper and draft Prudential Practice Guide 235 'Use of reserves in superannuation funds'. APRA has withheld finalising the Guide pending the release of the Review's final report. 'Reserves' are not defined in the SIS Act, but the draft Guide distinguishes between amounts set aside for contingent events, which are regarded as reserves, and provisions for accrued expenses, such as administration or taxation, which, in APRA's view, are not reserves.

1.2.1 Levels of capital or reserves

In the absence of adequate trustee capital or reserves, losses incurred as a result of operational error, and not recovered from insurance or third parties, must be met out of current fund earnings or assets, essentially out of the entitlements of current members unless it is a defined benefit fund. Even if losses are recovered from a third party, there is inevitably both uncertainty and a time lag in that process, which can cause detriment to members leaving the fund during that process. The Panel considers that it would be more equitable and prudent if the impact of such losses could be spread over time with the immediate costs being met out of either trustee capital or an operational risk reserve maintained in the fund.

Some submissions supported an enhanced obligation for all registrable superannuation entity (**RSE**) licensees to hold capital,[5] while others suggested that current arrangements provided adequate protection for members so long as they were supported by appropriate risk management strategies and reserves maintained in the fund.[6]

The Panel believes that trustee capital or reserving requirements should be calculated having regard to the risks faced by each fund trustee. This would be consistent with the approach to holding capital against operational risks currently adopted for authorised deposit-taking institutions and proposed for life and general insurance companies.[7]

Trustees of SAFs are currently required to hold $5M in net tangible assets in recognition of the complexity of acting for a large number of separate funds. The Panel considers it would be inappropriate to reduce the protection currently afforded to SAF members through this capital holding, but also that it would be inefficient for an operational risk reserve to be held in each SAF. For that reason, the Panel proposes that SAF trustees should hold capital in their own right equivalent to the operational risk reserve that would be required if the combined SAFs were treated as a single fund.

APRA is also currently conducting public consultation on proposals to extend its prudential supervision framework to conglomerate groups, some of which include superannuation trustees. In

its discussion paper entitled: *Supervision of conglomerate groups*, released on 18 March 2010, APRA outlined its proposed approach to setting capital adequacy requirements at the group level.[8] The Panel also considers that the capital adequacy requirements for conglomerate groups should have regard to the operational risk reserves of relevant superannuation funds and that super fund trustees in a conglomerate group can have regard to the assets of the rest of the conglomerate group.

One purpose of a capital requirement is to ensure that if a fund failure occurs, there are resources available to facilitate an orderly resolution of issues, including taking legal proceedings if necessary. Apart from the level of fund assets, risk factors in determining the appropriate trustee capital requirements might include the extent to which the fund is self-administered, whether the fund's investments are managed in-house, the level of professional indemnity insurance held by the trustee, any other business activities of the trustee (such as operating one or more managed investment schemes) and the extent to which the fund's service providers have provided indemnities and have adequate capital reserves and insurance cover.[9]

The Panel notes that capital held by a trustee in its own right must be serviced, often at a cost to the members, whereas earnings on an operational risk reserve could contribute to the building of the reserve or be distributed to members' as an increment to fund earnings.

At the same time, the Panel is concerned that its proposals should be neutral as between existing industry sectors and should be phased-in over time so as not to impose an undue burden on current members.

APRA establishes the processes for calculating capital requirements in its other prudentially regulated industries by way of prudential standards. The Panel recommends in chapter 10 that APRA be given a standards-making power in superannuation. The greater flexibility provided by prudential standards in providing nuanced instruction to regulated entities, as compared with regulations, makes the use of a prudential standard a preferred option in setting capital or reserve requirements for superannuation trustees.

Recommendation 6.1

New capital requirements for trustees on a risk-weighted basis should be phased-in over time:

(a) **the SIS Act should be amended so that the governing rules for all large APRA funds are deemed to include a provision enabling the trustee to maintain a dedicated and identifiable operational risk reserve separate from member account balances;**

(b) **all large APRA funds must hold a minimum level of operational risk reserve, which reserve cannot be fully offset by trustee capital;**

(c) **legislation should define a minimum dollar figure for operational risk reserves and a maximum amount, expressed as a percentage of assets in the fund. APRA should have the power to increase the minimum level of capital on a risk-assessed basis. Details of defining a risk-weighted requirement between the minimum and maximum should be developed by APRA in consultation with industry;**

(d) **should APRA's assessment of risk in the fund lead it to the view that it would be appropriate for the fund to hold a higher level of reserve than the maximum amount set out in legislation, APRA should use other tools available to it to cause the trustee to reduce the risk exposure of the fund;**

(e) **any capital requirement that would otherwise be imposed under the trustee's Australian financial services licence in respect of non-superannuation business should be in addition to the capital requirement imposed under the SIS Act;**

(f) **trustees of SAFs should be required to hold an amount of net tangible assets in their own right, calculated by APRA having regard to the operational risk reserve that would be required if the aggregate of SAFs under trusteeship were a single fund; and**

(g) **the capital adequacy requirements for prudentially-supervised conglomerate groups should have regard to the operational risk reserves in any superannuation fund or funds that are in the group and adequacy requirements for group trustees should have regard to the risk-weighted assets of the rest of the conglomerate group.**

In making this recommendation, the Panel has sought to balance the costs to the current generation of members of transition to the new arrangements against the need to provide them and future members with enhanced protection against operational risk.

The Panel emphasises that the mandated operational risk reserve would be distinct from any investment fluctuation or other reserve held by the fund. It would be subject to the existing SIS Act requirement that the trustee devise and implement an investment strategy for the reserve, which includes a requirement, among other things, to ensure adequate liquidity within the reserve.

2 LICENSING OF ADMINISTRATORS

A few very large administrators have emerged over the past 20 years. Their role in the superannuation system is critical to its success. The corporate failure of any one of them could

create a very difficult position for the industry, while the operational collapse of any of them could create a real crisis.

The current lack of ready access to capital by administrators to support ongoing investment in improved technology and to address liability in the face of operational risk represents a real concern which needs to be addressed in the near term, even though this may result in a transitional increase in administration costs for funds.

APRA currently has some regulatory reach into outsourced providers, such as administrators, by way of the outsourcing operating standard under the SIS Regulations.[10] Trustees' contracts with their administrators must, among other things, require administrators to give information to APRA or the trustee on request, to allow APRA access to premises and to meet with the administrator, and to require an audit to be conducted. An arguable limitation of this approach is that the only remedy available in the event of failure of an administrator to meet those requirements is for APRA or the trustee to take a civil court action for breach of contract. APRA currently has no legislative power to supervise the activities of administrators.

Administrators are not required to be licensed, but need an Australian financial services licence (**AFSL**) if they provide financial advice to members on behalf of the trustee. Currently, some administrators hold an AFSL and others do not. However, in any case, ASIC has limited powers over the ambit of work administrators do as delegates of superannuation trustees.

Most of the breach notifications ASIC gets from trustees relate to breaches caused by defects in the administrative process. ASIC requires trustees to rectify breaches and put in place procedures aimed at preventing recurrence, but ultimately both ASIC and trustees rely on fund administrators to get things right. If they do not, then trustees have a limited ability to do anything about it. Trustees are often captive to the administrator, because it is difficult and costly to change administrators. In some cases, they are even more closely connected with administrators because they are either part owners or are themselves owned by the administrator.

Three of the largest superannuation administrators made a submission supporting the notion that they be licensed directly by APRA, rather than the prudential risks being addressed through the current indirect method of reviewing outsourcing arrangements.[11] The administrators suggested licence criteria around capital requirements, adequacy of resources, fit and proper standards and risk management standards. Many other industry players saw advantages[12] in administrators being licensed, though a few opposed the concept on the basis of likely increased costs to the industry and the imposition of a further layer of regulation.[13] For those trustees that conduct in-house administration, the administrative process is already subject to prudential oversight.

There was a view that imposing prudential regulation directly on administrators could result in a blurring of accountability, rather than having full responsibility for the fund's operation borne by the trustee, as is currently the situation.[14] The Panel believes, however, that the trustee should remain the entity that is ultimately accountable and liable to members and that, even though the trustee might have contractual recourse to the administrator in the case of error, the member should not have to look to the administrator in the first instance to correct any error or to pay any damages for loss. To further address this issue, the Panel proposes that the SIS Act explicitly exclude, as a defence available to the trustee in any court action brought by a member against the trustee, reliance on the fact that the administrator was licensed by APRA.

The Panel has no doubt about the prudential significance of the administration function in superannuation. It notes that no other service provider in super — or any other prudentially supervised industry — is subject to prudential supervision, and is conscious that introduction of licensing and prudential supervision for administrators risks having trustees rely on the licensing process rather than their own due diligence in determining the soundness of the administrators' processes.

Notwithstanding these concerns, the Panel has determined that administrators are of sufficient significance to the overall operation and efficiency of the Australian superannuation system, as to warrant licensing and supervision by APRA.

Increasingly, administrators are also acting as clearing houses by being responsible for acceptance of contributions linked with member data and transmission of those contributions and data to the correct super fund, rather than just maintenance of all member records. To ensure that there is a level playing field, the Panel is of the view that all commercial clearing houses, even if they do not perform a general administrative function for superannuation funds, should also be licensed by APRA.

Recommendation 6.2

The SIS Act should be amended to:

(a) define 'superannuation administrator' and empower APRA to license superannuation administrators, to impose conditions modelled as appropriate on the conditions applicable to RSE licensees, and to enable APRA to impose, modify or revoke additional conditions. Licence conditions should include a risk-weighted capital requirement;

(b) require that trustees may only use a superannuation administrator licensed by APRA for administration functions which are covered by the outsourcing operating standard. This process should be funded by a levy on those administrators;

(c) require commercial clearing houses to be licensed as administrators; and

(d) make clear that the trustee remains liable to the member in the first instance even if the trustee has outsourced administration to a licensed administrator.

Recommendation 6.3

Obligations imposed by way of licence conditions on external administrators should be replicated where appropriate by variations to the licence conditions of RSE licensees that operate an in-house administration system.

While administrators and clearing houses acknowledge that theirs is a low margin/low profit business, they were firm in the belief that the market and competition should set both fee levels and fee structures. The Panel endorses that approach, while cautioning trustees against an excessive focus on negotiating down the administration fees, which tend to be highly visible, while paying less attention to other costs, including investment costs and costs associated with the promotion and marketing of the fund.

3 RISK MANAGEMENT STRATEGIES AND PLANS

3.1 Focus on risk

As a core element of maintaining the integrity of the super system, from 1 July 2004 the revised APRA licensing regime required licensed trustees to develop and implement a risk management strategy (**RMS**) at the trustee level,[15] and a risk management plan (**RMP**) at the RSE level.[16] The separate instruments are required because some RSE licensees might act as trustee for more than one RSE and might also conduct other activities such as owning an administrator or managing non-superannuation investment schemes. Where the sole business of the RSE licensee is to act as trustee for a single fund, the RMS and RMP can be combined into a single document.[17] The trustee must also secure an annual audit in the approved form that must include statements as to whether, in the opinion of the auditor, the fund has complied with the RMS and RMP throughout the year.[18] However, the auditor is not required to express an opinion as to the comprehensiveness or suitability of the RMS or RMP.

The Panel considers that the requirement to make an RMP available to members on request has resulted in a less effective risk management regime than could otherwise be the case.[19] Anecdotal evidence suggests that members rarely, if ever, request a copy of the RMP from the RSE licensee. Providing members with the RMP is unlikely to improve member decision-making because members are unlikely to choose one fund over another on the basis of their risk management framework. Further, APRA has noted that dissemination of the risk management measures in the RMP such as fraud prevention and detection arrangements could expose the fund to increased attempts to circumvent those controls.[20]

The Panel believes that the comprehensive requirements of an RMS and RMP have resulted in an increased focus on risk by trustees. However, the requirement to make the RMP available to members detracts from its utility as a genuine risk management tool for trustees. The absence of any requirement on the part of an auditor to assess whether the RMS or RMP is fit for purpose in the context of the trustee's operations reduces its value and tends to have the focus on getting through the audit and making sure that the RMP is not easy to breach, and that leads to 'dumbing it down'.[21]

Recommendation 6.4

Section 29PD of the SIS Act should be repealed, so that the trustee is not required to make a copy of the trustee's RMP available to a member or to the employer sponsor in the case of a defined benefit scheme.

Recommendation 6.5

The SIS Act should be amended to provide that, if a trustee makes a formal decision that the RMS fully addresses all risks relevant to one or more of the RSEs under its trusteeship and documents that fact within its RMS, it is not obliged to prepare a separate RMP in relation to the nominated RSE(s).

3.2 Liquidity

A specific area of risk to be addressed by trustees as part of their consideration of investment strategies and risk management is liquidity. This refers to the capacity of a trustee to transform fund assets quickly into cash to make timely payments as required, such as pension payments or requests from members to exit the fund. Assets like government bonds are highly liquid, while physical assets like property and unlisted investments in infrastructure are far less liquid because they can take much longer to sell and turn into cash. Liquidity needs of funds can vary depending on the age of their membership, growth and rate of entry, exit or switching between investment options and market conditions. Liquidity is different from a fund's net asset position or solvency. An entity can have positive net assets (ie its assets are worth more than its liabilities), but have a liquidity problem if it cannot turn a sufficient amount of those assets into cash quickly enough at an acceptable price.

A fund with a liquidity problem could not only adversely affect its members (particularly those in the pension phase) but also lead to a loss of confidence in the system as a whole. A fund that needed to engage in a forced sale of assets in a depressed market in order to meet short term liquidity requirements would cause long term detriment to all members. There was anecdotal evidence of this occurring in a number of cases during the GFC. For example, during the GFC, previously liquid assets held by some superannuation funds became illiquid due to capital freezes in mortgage, cash management and property trusts. In order to meet portability, switching and capital drawdown requests, some trustees were forced to sell equities into a depressed market, while trustees who were unable to meet these requests applied to APRA for a variation or suspension of portability requirements.

Policy therefore needs to balance having an adequate degree of confidence that a fund will have sufficient liquidity, without unduly impacting a fund's ability to hold illiquid assets that may have attractive characteristics as an investment.

Managing the liquidity risks inherent in 'maturity transformation'[22] (or 'borrowing short and lending long') is a core function for any financial sector entity. Banks, for example, routinely accept liabilities in the form of at call deposits of cash and use these to invest in residential mortgages with a 25 to 30-year repayment horizon. Super funds undertake a not-too-dissimilar function.

There are legal and commercial considerations for trustees in managing liquidity. By law, a member is entitled to ask to leave a fund on '30-days' notice (known as the portability rule).[23] APRA can suspend or vary members' rollover entitlements on request from a trustee if it believes that meeting the rollover request would impact negatively on the fund's financial position, or on the interests of other members of the fund.[24] Even without a legal requirement, there is a commercial imperative for trustees to allow people to exit the fund within a reasonable period.

Most trustees allow members to switch between investment options, and this also requires liquidity within investment options. There are no legislative requirements as to how often trustees must offer switching between investment options nor for the timeframes within which trustees must action a member request for a switch. Trustees can choose to limit the frequency and timeframes for switching. Therefore, investment choice is subject to trustees complying with their disclosure obligations so that members understand the fund's particular rules.

There are exceptions to the 30-day portability rule for investments in illiquid assets. A trustee does not need to comply with the 30-day portability rule subject to certain conditions. First, its disclosure material must say that the investment option is illiquid and specify the maximum notice period for

redemption. An investment is illiquid if it cannot be converted to cash in less than 30-days or converting it to cash within the 30-days would be likely to have a significant adverse impact on the realisable value of the investment. When a member chooses an illiquid investment strategy, the trustee must also get written acknowledgement that the member understands and accepts that a redemption period longer than the 30-days applies (in respect of the whole or part of the requested transfer amount) because of the illiquid nature of the investment. The SIS Act currently addresses the situation where the investment option is illiquid from the outset; however, it does not address what happens when the option becomes illiquid after the investment is made.

The Panel notes that trustees should have a strategy for managing liquidity in each investment option that they offer, not simply at fund level. The availability of switching between investment options means that each investment option needs sufficient liquidity.

Recommendation 6.6

The Risk Management Plan should explicitly include a liquidity management component to ensure that trustees identify and manage liquidity risk at both the fund level and the investment option level.

3.2.1 Liquidity issues during the GFC

The GFC saw some funds facing liquidity strains as members attempted to switch into other investment options (typically cash). Some retirees experienced distress because their superannuation savings were concentrated in options such as mortgage trusts that had been previously thought to offer adequate liquidity, but which were frozen by the underlying fund manager. Such instances were mostly identified in retail funds and members experienced the same liquidity problems as direct investors in these products.

Despite these issues, it is noteworthy that though short-term liquidity of some significant funds was challenged, most funds did not have liquidity problems and there was not a large scale flight toward what was perceived as the most liquid, or safe, fund or investment option. However, many thousands of members of retail funds found their particular investment options frozen.

Some submissions noted that funds with diversified assets were more appropriately suited to deal with adverse short-term liquidity challenges, as were those with large positive net cash flows and stable membership bases. Therefore, funds with substantial exposure to a membership base close to retirement, or with a membership that has shown a high propensity to switch investment options, might have greater liquidity needs.

There seems a good case for ensuring that liquidity requirements match the legitimate expectations of members of a particular fund, including their expectations about being able to switch investment options.

In its submission, IFSA advocated that illiquid funds or investment options should be defined in accordance with the Corporations Act (that is, those with 20 per cent or more invested in illiquid assets).[25] The Panel is wary of instituting such a rule when liquidity needs differ greatly across the superannuation industry. Constant flows of contributions allow some funds to manage liquidity with this cash flow, whereas other funds (or investment options within funds) have to manage liquidity with only the assets they hold. Therefore, instituting a one-size-fits-all approach could create a

disincentive to hold a certain amount of illiquid assets that could offer improved returns over liquid assets.

3.2.2 Liquidity and MySuper

Given that MySuper products are likely to be large in scale with diversified investment portfolios and substantial contribution inflows, liquidity should be more readily managed in those products. It seems appropriate that MySuper members, many of whom will not have actively chosen to be in the product, are able to exit in a timely manner. The Panel considers the current 30-day rule appropriate in these circumstances and that this would not unduly constrain a MySuper product from investing in illiquid assets such as infrastructure.

3.2.3 Liquidity and choice

The Panel believes a less prescriptive approach is appropriate for choice products that invest in illiquid assets. Choice members actively choose their investment strategies and there is merit in allowing different portability rules for investment options with illiquid assets. For instance, a fund might want to offer an infrastructure investment option that allows investors to switch only 20 per cent of their holding of that investment for the first five years. In this regard, the Panel considers that the current exception to the 30-day portability rule for investment options in illiquid assets is appropriate for choice products.[26] There is anecdotal evidence that this exception is not used because of the requirement to get written member consent. Therefore, the requirement to have separate written member consent should be removed provided that there is prominent disclosure to the member that the option is illiquid, together with an indication of the timeframe within which it can be redeemed, such as through PDSs and product 'dashboards' which the Panel, in chapter 4, has recommended be developed.

Recommendation 6.7

The exception to the portability rules for illiquid assets should be retained for choice products only, but the member's written consent should no longer be required provided that there is adequate disclosure to the member before they select an illiquid investment option.

Recommendation 6.8

Subject to recommendation 6.7, the current portability rules should be retained for both MySuper and choice products.

3.2.4 Liquidity and retirement phase

Liquidity risk differs for members in the retirement phase compared to those in the accumulation phase. Members in the retirement phase are likely to be highly reliant on a regular cash flow from their superannuation, as they generally have little capacity to supplement their income from other sources.

It follows that trustees need to assess even more rigorously the liquidity characteristics of investment options offered to members in the retirement phase.

Recommendation 6.9

The trustee's RMP should have particular regard to liquidity characteristics of investment options offered to members in the retirement phase.

4 DEFINED BENEFIT FUNDS

A 'defined benefit fund' is defined in the SIS Regulations. Essentially, under those Regulations, a defined benefit fund is one in which contributions are pooled and are not allocated to any particular members. Further, a defined benefit member is someone whose retirement benefit is calculated pursuant to a formula based wholly or partly on the member's salary. Under the SIS Act, if a fund has even one defined benefit member, it is a defined benefit fund for all SIS Act purposes.

Defined benefit funds have served many members well over a long period because they provide greater certainty about the amount of the retirement benefit and because members do not bear the investment risk.[27]

In 1982/83, 82 per cent of members were in defined benefit funds. By June 2009, only 2 per cent of members of large APRA funds were in 'pure' defined benefit funds, (that is, funds where all members receive only a defined benefit on retirement) 39 per cent were in 'hybrid' funds (funds that offer both defined benefit and accumulation benefits to an individual member, or more commonly have some defined benefit members and a much larger number of pure accumulation benefit members) and 59 per cent were in accumulation funds.[28] This decline in membership is the result of employers being unwilling to bear the investment risk inherent in defined benefit schemes, employees wanting to be members of accumulation funds in order to benefit from upswings in the share market and employees requiring greater flexibility as they changed jobs more frequently.

Defined benefit fund membership will continue to decline in coming years because the vast majority of defined benefit funds are closed to new members. However, in June 2009 there were 188 large APRA funds offering defined benefits (including both pure defined benefit funds and hybrid funds). These funds remain significant to the industry as they contain $382.5 B of assets.[29] Only $53.4 B is in 'pure' defined benefit funds, with $329 B in hybrid funds.

Since defined benefit funds are not subject to the same portability demands as accumulation funds and because members do not have investment choice over the defined benefit assets, the defined benefit assets can be invested for the long term. Defined benefits also have the advantage that investment risk is borne by the employer so that volatility is reduced for any particular member.

4.1 Funding standards and protection of members

4.1.1 The SIS Act

The SIS Act has, relative to many other regulatory regimes in the world, taken a soft approach to defined benefit funding requirements and has given APRA a rather 'light touch' enforcement role.

The SIS Act is primarily concerned with ensuring that 'minimum requisite benefits' are funded, rather than being concerned that 'vested benefits' are covered. Minimum requisite benefits are the

benefits provided in a defined benefit fund to meet the requirements of the SG Act. They are actuarially determined and are not measured in the same way as accumulation benefits.

The failure to fund 'minimum requisite benefits' results in the fund becoming 'technically insolvent' under the SIS Act. The trustee has 5 years in which to restore the fund to a position of technical solvency.[30]

The failure to fund vested benefits (so that the vested benefits index is less than 100 per cent) means that the fund is in an 'unsatisfactory financial position' under the SIS Act. There is nothing prescribed under the SIS Act as to when the fund must be returned to a 'satisfactory position'.[31]

As there is often a significant difference between a member's minimum requisite benefit and vested benefit and as a member's periodic benefit statement does not report the minimum requisite benefit, but does report the vested benefit, it is reasonable to believe that the member would expect funding to be set so as to secure the higher of the two (that is, vested benefits).

In its submission, the Institute of Actuaries of Australia says that the focus of the SIS Act and Regulations ought to change so that vested benefits are specifically protected and so that rectification of an 'unsatisfactory financial position' is emphasised. The Institute also makes the point that the current focus in the SIS Act on solvency and minimum requisite benefits does not help trustees who undertake the process of negotiating higher employer contributions to restore the fund to a satisfactory financial position so that vested benefits are covered.[32]

The Panel recognises that as each defined benefit fund and the financial strength of each participating employer is different, strict prescription about funding is undesirable. Accordingly, the trustee and APRA need to have flexibility so that employers are not put under so much financial pressure that the employer fails, leaving the member without a job. Similarly, it is desirable that large surpluses not be created.

It is important that the issue of coverage of vested benefits is better addressed, preferably by way of APRA issuing a prudential standard under the powers recommended in chapter 10.

Recommendation 6.10

APRA should issue a prudential standard that focuses on funding to protect vested benefits and specifies the time period within which a defined benefit fund that is in an unsatisfactory financial position must be restored to a satisfactory financial position, in much the same way that the SIS Act presently addresses insolvency of funds and minimum requisite benefits.

Recommendation 6.11

The SIS Act should be amended so that a defined benefit fund which is technically insolvent should not be allowed to accept SG Act contributions unless the fund actuary and the trustee form the view that it is reasonable to believe that the fund will be restored to solvency within the period prescribed under the SIS Act.

4.1.2 Corporations Act and employer insolvency

As defined benefits are reliant on the employer being able to continue to contribute the amount which the actuary periodically determines is required, the financial strength of the employer is critical. When an employer becomes insolvent, it is important that member benefits are not compromised because contributions have not been made. Under the SIS Act, APRA has no direct power over the employer in this regard. (In chapter 10 the Panel makes specific recommendations about superannuation contributions in relation to the Government Employee Entitlement and Redundancy Scheme (GEERS)).

In the event of the employer's insolvency, 'superannuation contributions' are regarded as a 'priority payment' (along with wages and any superannuation guarantee charge that is due) under section 556(1)(e) of the Corporations Act which means that they must be paid in priority to unsecured debts and claims. However, there are a number of other items set out in section 556(1) which rank higher in priority than superannuation contributions.

'Superannuation contribution' is defined in section 556(2) of the Corporations Act as follows:

> *"in relation to a company, means a contribution by the company to a fund for the purpose of making provision for, or obtaining, superannuation benefits for an employee of the company, or for dependants of such an employee."*

How this definition applies to a defined benefit fund is not absolutely clear, but there is judicial support for the view that it includes contributions made to a defined benefit fund pursuant to a funding and solvency certificate.[33]

Recommendation 6.12

The definition of 'superannuation contributions' in the Corporations Act should be clarified so that there is no doubt that defined benefit contributions are afforded the same protection as accumulation contributions.

4.2 Defined benefit funds in the choice architecture model

The Panel's design of the MySuper product is premised on MySuper being an accumulation product. MySuper criteria are intended to protect members from excessive fees and to have those members in a properly designed investment strategy in which the trustee has established an appropriate asset allocation and balanced risk and return.

There are very few funds which offer 'pure' defined benefits. In most defined benefit funds, the governing rules have been amended in recent years to add new categories of accumulation members. Further, most defined benefit members can have an accumulation-style component to their benefit, for example, as a vehicle to accept salary-sacrifice contributions or additional voluntary contributions.

Defined benefit members are not exposed to risks in respect of costs and investment performance in the same way that accumulation members are. However, defined benefit members might have this exposure in any accumulation-style account that is part of their overall benefit.

Recommendation 6.13

Defined benefit funds should automatically qualify as 'default' funds for SG Act purposes in respect of the defined benefit provided to members so long as the fund meets the requirements of the SG Act to receive contributions.

Recommendation 6.14

If the defined benefit fund is a hybrid fund, then the MySuper criteria must be met for accumulation members in order for the fund to be accepted as a default fund under the SG Act in respect of those members.

Recommendation 6.15

If a member has both defined benefits and accumulation benefits as part of the defined benefit fund's benefit design, and the accumulation benefit is not necessary to meet the employer's SG Act obligations, then the MySuper criteria do not have to be met in respect of those members.

4.3 Self-insurance for defined benefit funds

A number of defined benefit funds (and sub-plans) presently self-insure death and total and permanent disability (**TPD**) benefits. The most common reason is because the governing rules of the fund include a definition of TPD for which external insurance cover cannot be obtained.

One idea supported in several submissions is to require all funds to have external insurance cover. Other submissions thought that the present system should continue so that APRA would consider self-insurance by public offer defined benefit funds on a case-by-case basis and non-public offer defined benefit funds could continue to self insure.

The risks associated with self-insurance in relation to defined contribution funds are diminished in defined benefit funds, because the employer is liable for funding the promised benefit. At the same time, the inability or unwillingness of an employer to meet those liabilities represents a severe risk for a self-insuring trustee, especially in times of crisis such as a pandemic.

While external insurance is to be preferred and encouraged, the Panel considers that, as most defined benefit funds are closed to new members and declining in number, those defined benefit fund trustees that are presently allowed to self-insure death and TPD benefits should be permitted to continue to self-insure those benefits.

Where self-insurance is permitted to continue, it must be subject to regular APRA monitoring. APRA licensing conditions for the defined benefit fund trustee who is self-insuring would also allow APRA to take into account the actuarial controls and reserves that the trustee has in place.

The Panel discusses the issues relating to self-insurance in defined contribution funds in more detail in chapter 5.

Recommendation 6.16

Trustees of defined benefit funds (or sub-plans) that are presently allowed to self-insure death and TPD benefits should continue to be allowed to do so.

4.4 Legislation and defined benefit funds

There have been several occasions where the circumstances of defined benefit funds have not been appropriately taken into account when new legislation has been considered. This has led to increased complexity in a sector of the industry which was not simple to begin with and has resulted in increased costs as systems had to be manipulated to cope with the legislation.

Submissions provided numerous examples such as:

- the contribution caps relating to notional taxed contributions and grandfathering provisions;
- the crystallisation of tax-free component of benefits as at 1 July 2007, particularly in respect of defined benefit pensions; and
- the portability of benefits, especially for deferred defined benefits.

The Panel urges policy makers to be alert to the complexities that are created in defined benefit funds through regulatory changes designed primarily for defined contribution funds, as defined benefit funds still represent a very significant segment of the overall superannuation market and will remain so for the foreseeable future. It is important that the costs in respect of these declining funds not be unnecessarily increased.

5 CONTROL OVER INVESTMENTS

It is frequently suggested by commentators that superannuation represents a major pool of Australian assets available for investment in various projects which are deemed to be of particular national significance. Some argue that the 'social good' aspect of super, supported by its concessional taxation, justifies it being conscripted for investment in favoured projects. Often, such proposals invoke job creation, industry support or consideration of socially useful areas such as low cost housing or infrastructure as justifications.

The Panel has established as one if its guiding super policy principles (see Part One of this report) that governments should not seek to direct super funds to invest in particular assets or asset classes, regardless of how much it might seem in the national interest to do so.

The basic policy proposition for super is to generate savings for members' retirement. Externalities, whether a national interest in developing infrastructure, or promoting sound environmental, social and governance outcomes, need to be reflected in the risk and return valuation of a potential investment in order to fit within that proposition.

5.1 Managing elements of investment risk — ESG issues

A specific investment risk to be addressed, either in a trustee's investment strategy or its RMP, relates to environmental, social and governance (**ESG**) issues. Australian investment managers and asset owners have generally lagged their counterparts in some other advanced economies in their consideration of ESG issues in making investment decisions. It has been suggested[34] that factors behind this are:

- definitional issues and confusion over what constitutes ESG issues;
- confusion over whether a focus on ESG issues is consistent with a trustee's responsibility to act in the best interest of members;
- a perception that investments selected on ESG criteria underperform when compared with the broader market; and
- a lack of investor demand.

There has been a growing realisation that ESG issues pose investment risks with the potential to impact long-term viability of investments and consequently, the return on those investments. Recent surveys by SuperRatings[35] and jointly by the Climate Institute and the Australian Institute of Superannuation Trustees[36] have found between 71 and 83 per cent of superannuation fund trustees surveyed consider that integrating ESG issues into their investment decisions was part of their responsibilities and consistent with their fiduciary duties.

Further, in May 2010, Australia had 102 signatories to the Principles for Responsible Investment (formerly known as the United Nation's Principles for Responsible Investment). This is more than any other nation with the exception of the United States which had 109. Australia's signatories consist of 53 investment managers, 32 asset owners (including superannuation fund trustees) and 17 professional service partners.[37]

In Australia, section 1013D of the Corporations Act and Corporations Regulation 7.9.14C require trustees to advise members on the extent to which ESG factors are taken into account (if at all) when setting its investment strategy and selecting investments.

To clarify superannuation trustees' concern over whether ESG issues are consistent with their fiduciary responsibilities, the Government asked APRA, in April 2009, to review its guidance to superannuation fund trustees to take greater account of ESG issues in their investment practices. APRA is reviewing the relevant prudential practice guides and will release updated guidelines in the near future.

The OECD's Guidelines for pension fund governance[38] include a statement to the effect that prudent risk management practices should consider intangible risk factors such as environmental, political and regulatory changes, as well as the pension fund's potential market impact through its investment decisions. The guidelines also say that the risk management strategy should seek to identify and explicitly balance short and long-term considerations. The Panel considers that competent trustees and investment managers would have regard to such factors when considering viability and return on investment.

5.1.1 Performance of ESG investments

A growing number of studies have found that there is no significant difference between the financial performance of mutual funds that consider ESG issues and those that do not.[39] These findings were supported in Australia by Donald and Taylor.[40] Several other studies suggest that there might be more risk associated with funds that consider ESG issues. However, these studies also found that there was no significant difference in performance on a risk-adjusted basis.[41]

The 2010 SuperRatings' Fund Sustainability Review[42] found that Australian share options which consider ESG issues have outperformed the traditional Australian share index over the past five years by over 1.5 per cent per annum. However, this outperformance did not continue when comparing balanced options which do and do not consider ESG issues.

SuperRatings' research also showed that less than 1 per cent of total assets of funds surveyed were invested in investment options which consider ESG issues.

5.1.2 Trustees and ESG risks

The Panel considers that superannuation investment is long term and that trustees of superannuation funds, perhaps more than any other type of investors, are well placed to take advantage of long-term opportunities. Accordingly, they should consider ESG risks appropriately.

However, the Panel does not believe that the Principles for Responsible Investment, or similar, should be prescribed.

Recommendation 6.17

In developing investment strategies, trustees should explicitly consider both short and long term risks, consistent with their stated investment horizon. Trustees would not be required to make decisions based on ESG issues but as ESG issues represent one type of long term risk, trustees should consider ESG issues as they think appropriate.

5.2 Investment in infrastructure

5.2.1 Issues

Infrastructure investment is critical to Australia's long-term economic performance. This has been generally recognised most recently in the government's decision, as part of its response to the Australia's Future Tax System Review, to establish a new infrastructure fund for the States and Territories. The Government has also announced its intention to establish a Regional Infrastructure Fund to invest in projects with potential partner funding from States, private investors and/or local governments, with a particular focus on developments in mining regions and those which contribute to resource and export capacity.[43]

Infrastructure investments can also enhance superannuation funds' performance. Investing in unlisted infrastructure can be beneficial (although illiquid) because listed infrastructure (which is liquid) tends to move in line with broader market trends — eliminating much of the benefit of infrastructure as an asset class that is not closely correlated with other asset classes.

However, infrastructure has different characteristics from other asset classes, such as a high up-front cost, long life and potential lack of liquidity. There are significant scale benefits in infrastructure investment and potential investors need to devote substantial resources to understanding infrastructure projects.

There are limited data on superannuation investment in infrastructure. APRA does not currently collect separate data on this, and the different modes available to trustees to gain exposure to infrastructure investments mean that information is buried under different headings. Trustees' investment in listed infrastructure vehicles is reported to APRA as Australian or foreign equities and lending to infrastructure vehicles is reported as fixed interest, while direct investment or participation in private equity vehicles is reported within the category 'other'. At June 2009, 14 per cent of assets in the default investment options of large APRA funds were classified as being in the 'other' category.[44]

SuperRatings examined the average asset allocations of the balanced options in the largest 50 superannuation funds (includes industry funds, corporate funds, public sector funds and retail funds) from June 2005 to June 2009 and found that, on average, 8.1 per cent of assets were invested in direct or unlisted infrastructure.[45]

Super fund investment in other asset classes may also, indirectly, finance domestic infrastructure. For example, super fund participation in privatisations of existing government-owned infrastructure such as the telephone network, railways and airports has freed up government funds to facilitate debt reduction or other capital (or recurrent) expenditure. Direct investment in major companies, including those holding infrastructure assets formerly owned by government, can help finance their infrastructure developments.

The infrastructure fund for the States and Territories recently announced by the government will add another dimension to government financing of infrastructure and opportunities for investors.

It is important to distinguish between factors that might inhibit investment in infrastructure more broadly, and factors specific to superannuation. If there are broader factors inhibiting infrastructure investment, these should be addressed through a generic solution, so as to benefit superannuation and non-superannuation investors alike.

While a few submissions suggested that there are no barriers to superannuation fund trustees investing in infrastructure, most identified a number of barriers including:

- lack of suitable projects;
- lack of a secondary market;
- sovereign risk (such as a government changing the terms of the contract);
- complex and expensive bidding processes including due diligence tailor made for each individual project;
- an insubstantial consideration and offering by super funds of annuities and other like products, meaning that the apparent advantages of infrastructure as a long term, cash-flow stable asset class are of less value to super funds than might be initially thought;
- lack of scale on the part of funds;

- insufficient internal expertise in infrastructure;
- lack of transparency about pipeline and investment opportunities and inadequate integrated infrastructure planning;
- difficulties with valuation and unit pricing;
- concern that trustees focus too much on short term returns and infrastructure returns are more variable in the short term; and
- concerns about liquidity brought about by the 30-day portability rule.

A number of submissions identified the main barriers as being difficulties in dealing with State Governments such as complexity and costs in dealing with bidding for major projects, a lack of certainty about the progression of projects and sovereign risk. This 'project' risk is a challenge for all investors, not just superannuation funds.

The Panel notes that the Commonwealth Government has taken some steps to address these issues. For example, the Government announced as part of the 2010-11 Budget, reforms to promote a deep and liquid corporate bond market and the development by Infrastructure Australia of a coordinated pipeline of infrastructure projects.

5.2.2 Participation by super funds

The Panel is fundamentally opposed to the government mandating super fund participation in any particular investment class or vehicle, including infrastructure.

Infrastructure is like any asset class in that infrastructure investments will not automatically be a good investment proposition. Each project must be assessed on its own merits, particularly the risks involved.

The Panel considers the current regulatory regime has not had a significant adverse impact on infrastructure investment. Funds have been able to invest significant amounts in infrastructure within the current regime. For the reasons discussed earlier in section 3.2.2 in relation to liquidity more generally in MySuper products, the Panel does not believe change to the current benefit portability arrangements is necessary for superannuation funds to invest in illiquid investments such as infrastructure. Changes to these arrangements, such as increasing the portability requirement to 90 days or longer across the board, would likely have little effect given the challenges of liquidating infrastructure assets quickly, and would affect all fund members, whether or not they have an exposure to infrastructure investment. The Panel also believes that the exception to the 30-day rule for investments in illiquid assets such as infrastructure is appropriate for choice products.

There might be barriers to superannuation funds acquiring the scale or expertise to invest successfully in infrastructure in a cost-effective fashion. Infrastructure Partnerships Australia has identified the need to create scale in the superannuation industry in order to facilitate greater investment in infrastructure.[46] The Panel has recommended that trustees of 'MySuper' funds should have an explicit legal obligation to ensure they have sufficient scale to optimise net returns to members. This requirement should help drive the necessary scale for infrastructure investments. An increase in scale and expertise should provide opportunities for superannuation funds to purchase direct domestic infrastructure investments either alone or in partnership with other funds.

Recommendation 6.18

The government should not mandate that superannuation fund trustees participate in any particular investment class or vehicle, including infrastructure.

ENDNOTES

1 'Superannuation Prudential Supervision Legislation', May 1993.
2 APRA, Quarterly Superannuation Performance, December 2009.
3 Government Response to SWG Recommendations, 28 October 2002 <www.treasury.gov.au/contentitem.asp?NavId=&ContentID=459>.
4 Mercer, 'Operational risk reserves a grey area for super funds', <www.mercer.com.au/summary.htm?idContent=1345390>.
5 For example, IFSA, Submission no. 382, pp 29-30.
6 For example, AIST, Submission no. 380, p 30; PricewaterhouseCoopers, Submission no. 356, pp 14-15; Towers Watson, Submission 367, p 12.
7 On 13 May 2010 APRA released a discussion paper entitled Review of Capital Standards for General Insurers and Life Insurers, in which APRA proposes to introduce an explicit capital requirement for operational risk as part of required capital for both general insurers and life insurers. The current life insurance capital requirements include a margin applied to the capital held in respect of investment-linked life insurance business that mainly relates to operational risk. This margin would be replaced by the proposed new operational risk capital charge.
8 Where a superannuation trustee is a member of a conglomerate group, APRA is proposing that the capital requirement for the group should cover the risks of the trustee's activities. This capital would be the greater of: 0.25 per cent of funds under management on account balances not invested in life insurance policies or bank deposits of a related party; any regulatory capital requirement that applies directly to the trustee; or the capital requirement calculated by the trustee's or group's internal model. This capital may be held anywhere in the group as long as it is readily available to the trustee when required. Following consultation, APRA expects to finalise the prudential standards for conglomerate groups during 2011 with a view to commencement during 2012.
9 For example, Law Council of Australia, Submission no. 336, pp 11-12.
10 Australian Prudential Regulation Authority 2004, Superannuation Guidance Note 130.1 Outsourcing, APRA, <www.apra.gov.au/Superannuation/upload/SGN-130-1-Outsourcing.pdf>.
11 AAS, Superpartners and Pillar Administration, Submission no. 213, p 2
12 For example, ASFA Submission no. 147, pp 30-31 of Appendix 1; AIST Submission no. 150, pp 33-34; Law Council of Australia, Submission no. 165, pp 7-8; MLC, Submission no. 209, p 14; Equipsuper, Submission no. 135, p 12; Rice Warner Actuaries, Submission no. 233, pp 19-20; Mercer (Australia) Pty Ltd, Submission no. 170, p 51.
13 For example, IFSA, Submission no. 226, p 46; Statewide Superannuation, Submission no. 188, p 10; Australian Bankers' Association, Submission no. 238, p 12.
14 PricewaterhouseCoopers, Submission no. 180, p 10.
15 SIS s29HA.
16 SIS s29PA.
17 APRA Draft SPG200- Risk Management, August 2009.
18 SIS s35C(5)(d).
19 SIS s29PD.
20 APRA Draft SPG200- Risk Management, August 2009.
21 Levy, B. Article in Super Review, Legislative hurdles to better risk management, 29 April 2010, <www.superreview.com.au/Article/Legislative-hurdles-to-better-risk-management/516198.aspx>
22 The difference between the average maturity of a financial institution's liabilities and its assets.
23 SIS Regulation 6.34.
24 SIS Regulation 6.37.
25 IFSA, Submission no. 72, p 11.

26 SIS Regulation 6.34(7).
27 Institute of Actuaries of Australia, Submission no. 332, p 2.
28 Sy, Wilson, 'Pension Governance in Australia: An Anatomy and an Interpretation, Rotman International Journal of Pension Management, Vol 1, issue 1, Fall 2008, p 32.
29 APRA, Annual statistics, 30 June 2009, table 15 and 16.
30 SIS Act Regulation 9.17.
31 SIS Act Regulation 9.04.
32 For example, Institute of Actuaries of Australia, Submission no. 332, p 3.
33 For example, Law Council of Australia, Submission no. 336, p 4, in relation to Ansett Australia Ground Staff Superannuation Plan Pty Ltd v Ansett Australia Limited [2002] VSC 576.
34 UNEP Finance Initiative Innovative financing for sustainability, October 2005.
35 Super Ratings, Media Release, 17 May 2010, <www.superratings.com.au/media/mediareleases/17052010>.
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39 Studies of socially responsible investing, <www.sristudies.org/Key+Studies>.
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42 SuperRatings, Media Release, 17 May 2010, Responsible investments outperform mainstream super options post-GFC, but little take up, available at <www.superratings.com.au/media/mediareleases/17052010>.
43 Hon Wayne Swan MP, Media Release 047, "$6 billion regional infrastructure fund", 9 June 2010
44 APRA, Statistics, Annual Superannuation Bulletin, June 2009.
45 SuperRatings SR50 Balanced Index.
46 For example, Infrastructure Partnerships Australia, Submission no. 416, pp 32-34.