

1. Executive Summary

The Your Future Your Super (YFYS) reforms have the potential to create a more efficient, fairer superannuation system that would improve retirement outcomes for millions of Australians. However as drafted, they fail to protect all Australian workers.

We call on the Government to expand the application of the legislation so all Australian workers, regardless of the product or fund in which their super is invested, can benefit from better information, transparency, and protection.

Industry Super Australia's Position

Notwithstanding the positive features in the Bill, **ISA only supports the passage of the Bill if it is amended** so that:

- ▶ it is **sector neutral** by capturing all payments by all APRA regulated superannuation funds,
- ▶ members are only **stapled to funds that have passed a robust performance test** that measures net returns and provides appropriate insurance for those in high-risk occupations,
- ▶ it **does not interfere with the proper exercise of trustees' discretion** by using regulations to ban, or place conditions on, payments or investments that are otherwise in the best financial interests of members.

The Best Financial Interests Duty

ISA believes that the best financial interest duty measures as currently drafted represent a missed opportunity to materially improve the superannuation system for members.

The measures are not sector neutral because they do not capture all expenditure including payments to related or connected entities. In doing so the measures ignore the financial arrangements which the Productivity Commission and the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry identified as being contrary to members interests.

The measures allow the Government, by Regulation, to ban payments and investments even if they are in the best financial interests of members. This power:

- ▶ undermines the proper exercise of trustees' duties
- ▶ exceeds the principles of the Bill

- ▶ it unjustified as APRA already has extensive powers to intervene if there are concerns about trustee conduct; and
- ▶ shifts important debate and oversight away from the Parliament.

While ISA agrees that all expenditure and investment by trustees must be in members best financial interests, the Government's approach to enforcing this obligation—a reversed evidentiary burden, no materiality threshold and a strict liability offense—comes at an additional cost to members with no demonstrated additional benefit.

Addressing underperformance in superannuation

ISA supports the broad policy intention of the measures to address underperformance in superannuation. We believe that all Australians deserve to be in a high performing fund. However again, the measures as currently drafted represent a missed opportunity to materially improve the superannuation system for members. In addition, they leave critical detail to regulations that should be in legislation.

Contrary to recommendations of the Productivity Commission, the performance test excludes 'Choice' products unless they are 'Trustee Directed Products' – a category to be defined in yet-to-be-released Regulation. This means that \$881 billion in superannuation funds and 8.4 million member accounts will not be benchmarked. Members will be stapled to products for which there is no performance assessment and therefore no basis for them to make better choices.

Performance benchmarking should assess the outcomes received by members in their accounts. That means the benchmarking should include both investment performance and, also critically, administration fees, which the proposed Net Investment Return benchmark excludes. High administration fees deliver materially lower balances at retirement. ISA analysis has found that members on average full-time earnings in high fee products will retire with \$158,000 less in their accounts than those in low-fee products.

The Government's proposed time period over which a fund's performance should be assessed – 8 years from 2022 – is too short. In general, products should be assessed over a sufficiently long time period to account for risk and market cycles and to reflect that superannuation is a long-term investment. The legislation should specify that all products should be assessed over 10 years or - if the product has operated for less than 10 years - for the life of the product.

The Government has proposed that APRA identify underperforming MySuper products by reference to a single metric of 50 basis points. This approach fails to distinguish between marginal and chronic underperformance and risks leaving members in products that significantly underperform the benchmark. The consequences of underperformance should be proportionate to the degree of underperformance, with harsher consequences for the worst performing products.

Single default account/stapling

ISA supports reducing the risk of members having multiple superannuation accounts. However, our preferred model of stapling is based on the automatic rollover of balances so that each member's balance is automatically moved into a new account when they join a new employer. Independent analysis shows this stapling model will save \$4.3 billion in fees and deliver more than \$135 billion in additional returns to members over 10 years.

Unfortunately, the Bill as drafted will result in members being stapled to poor performing products. This is a perverse outcome that undermines a key objective of the reforms. Stapling to any product should take place only if the product has been tested and found to have not underperformed.

Unless the Bill is amended, Members will be stapled to products that do not provide appropriate insurance for the occupations they perform. This is a particular risk for members who start work in a low-risk industry and move to a high-risk industry. The legislation should include an appropriate safeguard for employees who work in dangerous or high-risk occupations.

The YFYS measures do not address the significant existing stock of multiple accounts. The Government should include measures to deal with this by increasing the balance threshold for auto consolidation recommended by the Productivity Commission.

Implementation of the reforms

The Bill relies heavily on the use of Regulations to provide detail essential to the operation of the new measures. Regulations will be used to:

- ▶ prescribe how fund performance is measured
- ▶ define the characteristics of a 'stapled fund'; and
- ▶ to ban, or place conditions on, payments or investments that are otherwise in the best financial interests of members.

These are not matters of administrative detail – they go to the fundamental principles underpinning the reforms. The development and making of regulations are not subject to Parliamentary debate and amendment – only disallowance. Such a process shifts important debate and oversight away from the Parliament and creates policy and legal uncertainty around the most critical aspects of the reforms.

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About Industry Super Australia

Industry Super Australia (ISA) undertakes policy research and advocacy on behalf of over five million members of fifteen industry superannuation funds, to ensure that the policy settings for superannuation are consistent with the objective of maximising their retirement incomes

2. The Best Financial Interests Duty

The best financial interest measures as currently drafted represent a missed opportunity to materially improve the superannuation system for members. ISA's submission on this topic is guided by the following principles:

- ▶ The legislation must be sector neutral and clearly capture all financial arrangements including payment of fees and profits to any entity related to the fund, and dividends.
- ▶ Funds are already obliged to act in the best financial interest of members. Any additional regulation must have a net benefit to members, considering any increased costs of compliance.
- ▶ Any prescription relating to payments should be in the primary legislation and subject to parliamentary debate and amendment. It should not be in regulation.

Sector neutrality

The best financial interests duty in the Bill is not sector neutral in its application and does not address the setting of fees above cost recovery and payment of profits to related parties which are then reflected in dividends to shareholders. This is a widely used business model by retail funds.

The Productivity Commission estimated that these dividends are worth \$10 billion a year.¹ Accordingly, the measures are misdirected as they do not focus on the financial arrangements which the Productivity Commission and Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry identified as contrary to members' interests. The Productivity Commission stated that:

'Evidence abounds of excessive and unwarranted fees in the super system — a particular focus of evidence to the Royal Commission. Because super funds are legally obliged to act in members' best interests, the fees they charge should not exceed cost recovery levels.'²

In the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry Report Commissioner Hayne noted:

'The essential character of the conflict that confronts the trustee of any fund established for the profit of its parent company or corporate group is the conflict between the commercial interest of the parent company — to maximise profit — and the trustee's obligation to give priority to the duties to, and interests of, the beneficiaries.'³

¹ Superannuation: Assessing Efficiency and Competitiveness – Inquiry report (December 2018), found that annually there was 1.7 per cent unexplained under performance in the retail sector. Unexplained underperformance (170 bps) x retail funds under management (\$597.7bn) equals \$10 bn.

² Ibid, p. 40

³ Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry Report, 2019, p. 230

Related party arrangements for core fund services (including insurance, investment and administration) were a pervasive factor in numerous governance and compliance issues impacting members' financial interests. The Productivity Commission report shows payments such as investment management expenses – often to related parties among retail funds – are one of the largest components of total expense and account for a greater proportion of poor member returns.⁴

To protect members' interests, it is critical that the legislation clearly captures all payments from the fund (not just payments to third parties) including dividends and it must specifically deal with related party arrangements.

The Government has signalled its intention to use the best financial interests duty to limit marketing and advertising by funds. The Budget Papers highlight this as an area of concern. The Explanatory Memorandum includes a specific example of advertising by a fund and Minister Hume identified marketing and advertising as areas of focus⁵– despite the Royal Commission expressly finding that 'the existing rules, especially the best interests covenant and the sole purpose test, set the necessary standards' and need no further elaboration.⁶

In a compulsory superannuation system where employees can exercise choice about which fund to join, expenditure designed to provide members with critical information about fund features and performance is clearly in members' best financial interests and essential to the efficient operation of the system. Indeed, preventing such advertising may be considered anti-competitive and impede members ability to switch funds. In light of the proposed stapling model which places the onus on members to act in response to being stapled to a poor performing fund, such a view of advertising fails to consider members' best interests.

ISA Recommendation: The legislation should be amended to ensure that the Best Financial Interests duty applies to all expenditure including all payments, charges, dividends, fees or arrangements made by or on behalf of the fund including payments to related or connected entities. An example should also be included in the Explanatory Memorandum showing how these fees and payments will likely be assessed in light of the duty.

Demonstrating compliance with the best financial interests duty

ISA agrees that all expenditure and investments by trustees must be in the best financial interests of members and subject to appropriate record keeping. However, the Government's approach to enforcing this obligation - a reversed evidentiary burden, no materiality threshold and a strict liability offense - comes at an additional cost to members with no demonstrated additional benefit.

⁴ Superannuation: Assessing Efficiency and Competitiveness – Inquiry report (December 2018), Finding 7.3

⁵ Interview on Channel 7 Sunrise, 19 February 2021

⁶ Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry Report, 2019, p.235

The legislation empowers the Government to prescribe operating standards through regulations about record-keeping by trustees of expenditure. Failure to comply with these record-keeping obligations is a strict liability offence. It does not require APRA to prove fault on the part of the trustee. However, given that the law does not set a materiality threshold for expenditure and places the evidentiary burden on trustees to show a reasonable likelihood that expenditure was in members best financial interests, trustees will need to install extensive systems and processes to avoid liability for failing to maintain records of payments, no matter how small.

The absence of a materiality threshold for the additional record-keeping obligations placed on funds is expected to add tens of millions of dollars to trustee running expenses which in turn will reduce returns to members. There is no magic source of additional revenues from which these expenses can be paid. Ultimately all expenses are charged to members. The figure used in the Explanatory Memorandum for the industry-wide compliance cost for the entire YFYS package is \$5.1 million. Initial estimates by ISA member funds suggest this grossly underestimates the true compliance cost with one fund providing a preliminary estimate of \$1 million for compliance costs. The Government should undertake a thorough regulatory impact analysis of the cost of the reforms.

ISA Recommendations: The Government should apply a materiality threshold to the additional record keeping obligations placed on funds through operating standards.

Prescription relating to payments

The Bill enables regulations to be made to prohibit payments or investments which would otherwise be in the best financial interest of members. The Bill also enables regulations to be made to impose additional requirements on trustees and directors. Failure to comply with these requirements will also be a breach of the best interests duty.

Both powers are considered justified 'to allow Government to respond quickly to evolving industry practices as needed'.

The use of regulations to ban payments and investments that are in members' best financial interests is an unnecessary overreach, not in members best interests, and open to misuse for the following reasons:

- ▶ The Bill allows trustees to lawfully make certain decisions about payments and investments which can be demonstrated to be in the best financial interest of members. Yet by allowing regulations to be made to prohibit those payments or investments, or to impose additional requirements on trustees when exercising their duties, the Bill introduces an unacceptable and unnecessary level of policy and legal uncertainty for trustees and undermines the proper exercise of trustees' duties. For example, if a trustee makes an investment that is subsequently prohibited, any losses associated with selling that investment will be borne by members. Funds may therefore be more likely to invest in highly liquid short-term investments - forgoing long-term investment strategies.

- ▶ The development and making of regulations are not subject to Parliamentary debate and amendment – only disallowance. It is unacceptable that ministerial powers can be exercised to ban payments or investments made by trustees notwithstanding that they can be shown to be in the best financial interest of members, or to impose additional requirements on trustees. Such a process shifts important debate and oversight away from the Parliament.

In 2014, the Government at the time attempted to use regulations to unwind key Future of Financial Advice (FOFA) reforms that commenced on 1 July 2013 - reforms that were designed to protect consumers from poor quality and conflicted financial advice. Among other things, the regulations proposed to water down the newly legislated obligation on financial advisers to act in the best interests of clients. Had the regulations not been disallowed, the Government would have been able to significantly change key financial advice laws without Parliamentary approval.

- ▶ Regulation making powers are generally used to provide further detail on the application of the law and to adjust administrative detail. As explained in the House of Representative Practice and Procedure, 'Once Parliament has by statute laid down the principles of a new law, the Executive may by means of delegated legislation work out the application of the law in greater detail within, but not exceeding, those principles.'⁷ The use of regulation to prohibit or place conditions upon payments and investments, even when those payments or investments are in members best financial interests exceeds the principles of the Bill.
- ▶ The justification for this power is there may be a need to 'respond quickly to evolving industry practices'. No examples are given of where this may apply and indeed making regulation is not fast process if the Government engages in the consultation to which it has committed in the Explanatory Memorandum. If a quick response is needed, then APRA is the appropriate body to do this given its extensive powers. APRA's existing directions power – which was recently enhanced - in conjunction with the ability to make and enforce prudential standards and guidance is more than sufficient to ensure trustees make payments that are in the best financial interest of members. Some of these powers are relatively new and untested by APRA. While APRA may be unable to use its directions power on an 'industry wide' basis, action taken by APRA against one entity will likely be sufficient to prevent other entities engaging in similar practices. **Attachment A** contains a more detailed analysis of the powers available to both APRA and ASIC to supervise and enforce compliant conduct by trustees.

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https://www.aph.gov.au/About_Parliament/House_of_Representatives/Powers_practice_and_procedure/Practice7/HTML/Chapter10/Delegated_legislation

- ▶ The community rightly expects that investment decisions about members' retirement savings are made by independent professionals - obliged to act in members' best financial interests – and at arms-length from Government to protect them from politically-motivated changes. Eighty-one per cent of Australians believe that, where investments are in legal activities, investment decisions about their retirement savings should be left up to professional investment managers, not federal politicians.⁸

ISA Recommendation: The Government should remove the power to make regulations prohibiting or placing conditions on payments and investments and placing additional requirements on trustees.

⁸ National survey conducted by UMR February 2021

3. Addressing underperformance in superannuation

We support the broad policy intention of the measures to address underperformance in superannuation. We believe that all Australians deserve to be in a high performing fund and have the information and transparency sought by this Bill to protect their savings and enable them to make informed choices about their super. ISA's submission on this topic is guided by the following principles:

- ▶ All funds, irrespective of product or sector should be benchmarked to enable all members to know how their fund has performed.
- ▶ Performance benchmarking should assess the outcomes received by members in their accounts – that means the benchmarking should include investment performance but also other things like administration fees.
- ▶ Performance benchmarking should give the best information – which means it should reflect the long-term investment horizon for superannuation.
- ▶ The consequences of underperformance should be proportionate to the level of underperformance.

Product neutrality

The APRA performance test in the Bill will apply to all MySuper products but only those Choice products that meet the definition of a 'trustee directed product' (TDP) will be tested. While the precise definition of a TDP will be proposed in future regulation, it appears that a TDP will be one where the trustee has control over the design and implementation of the investment strategy. The Productivity Commission clearly stated that it considered trustees are ultimately responsible for the products that they design and offer to members including member-directed products.⁹ There appears to be no sound basis to exclude these products from the reforms. Further, for reasons that are unclear, Government statements indicate this will not include single-asset options.¹⁰

Products that are neither MySuper nor TDPs will not be tested. ISA analysis indicates that this means around \$881 billion in funds under management and 8.4 million member accounts will not be subject to benchmarking. In addition, there are no proposals to assess pension products. **Attachment B** to this submission contains our analysis.

Carving-out thousands of Choice and pension options from being tested is inconsistent with the approach recommended by the Productivity Commission. Anticipating arguments from parts of the super industry that where members make active investment choices the trustee should not be held accountable for any subsequent underperformance, the Commission countered 'it is the quality of investment options being *offered* to members...that should be the focus of regulatory attention.'¹¹ The Commission continued:

⁹ Ibid, p. 115

¹⁰ Your Future, Your Super, reforms to make your super work harder for you, October 2020, p. 22

¹¹ Ibid, p. 491

‘Funds should therefore be required to benchmark all MySuper products and virtually all choice investment options. This should include pre-mixed options, single-class options and options delivered through a member-directed investment platform...Retirement products should also be included...’¹²

Excluding thousands of Choice products from the first APRA annual performance test in 2021 will mean members are stapled to products the quality of which they cannot easily assess. After being stapled to a poor product in 2021, they may not be informed by the fund that the product is poor for at least another year – or longer. Unlike MySuper members, they will not be prompted by their fund to consider switching to a better product. Instead, members will be stapled to potentially poor performing products without being provided with the information they need to make better choices in a timely manner.

If the Government is going to unilaterally determine that millions of members be stapled to their existing superannuation products, those products should have been assessed by APRA to be good products, and members should have timely access to relevant fee and performance data that prompts them to consider alternatives.

If Choice members are implementing effective strategies and are being offered low-cost investment options, then there should be no objection to benchmarking of these strategies and options.

While the Commission envisaged that funds should be required to undertake the benchmarking, using a prescribed methodology based on that developed by the Commission’s inquiry, there is no reason why APRA could not undertake this work.

Delaying reforms that affect Choice funds has enabled the retail sector to avoid scrutiny. For example, dashboards for Choice products were first recommended in 2010 by the Super System Review led by Jeremy Cooper. Eleven years on they have still to be implemented. The Productivity Commission registered its concern at the lack of progress, and attributed blame:

‘Dashboards already exist for MySuper products and have been slated for choice products, but the process of developing these has been beset by industry resistance, missed deadlines and an attempt by the Government to exempt some products from the rules’.¹³

The Commission noted that lack of available data on Choice product performance meant it could only benchmark about 16 per cent of assets in the Choice segment. Of the sample it was able to construct, it found that 36 per cent of Choice products underperformed benchmarks tailored to their own asset allocation. According to the Commission, ‘Almost all were offered by retail funds’.¹⁴

¹² Ibid, p. 492

¹³ Ibid, p. 38

¹⁴ Superannuation: Assessing Efficiency and Competitiveness – Inquiry report (December 2018), p. 13

Resistance to the development of Choice dashboards by parts of the industry and by the Government, combined with a lack of available data, has resulted in poor performing Choice products – most of which are offered by retail funds – escaping effective scrutiny by members and regulators.

It remains to be seen how robust and comprehensive APRA's first Choice product Heatmap will be when it appears in late 2021. This first Heatmap will cover only one financial year (2020/21), enabling the providers of poor products to argue that there is an insufficient time series to meaningfully judge performance – potentially further delaying action by APRA to protect members of poor Choice products.

In the context of the proposed reforms, it is not acceptable that the lack of available Choice data results in the exclusion of Choice products. This only serves to entrench the lack of product neutrality and, in turn, sector neutrality that has hindered other reforms. If the Government genuinely wants to ensure that all underperforming funds are identified so that members' interests are protected then urgent efforts should be made by APRA to collect the necessary Choice data.

ISA Recommendation: The legislation should be amended to ensure that all APRA regulated superannuation products (other than defined benefit products) should be subject to performance benchmarking.

Performance should be assessed on Net Returns

The Bill is silent on the metric APRA will use to assess product performance, empowering requirements to be specified in regulation and by APRA. However, the Government is clear that it expects APRA will use a Net Investment Return (NIR) metric to assess product.¹⁵ ISA strongly supports the use of a Net Return (NR) measure instead, to ensure members' balances are not whittled away by funds using a NIR structure to fee gouge.

The critical difference between the NIR and NR measures is that the NIR only deducts investment-related fees, costs and taxes from the resulting return, while the NR deducts all fees, costs and taxes. In particular, the NR deducts administration fees, while the NIR does not. As such, the NR is a more transparent and accurate measure of the rate of return that members will actually receive.

It is not clear why the Government has asked APRA to use a NIR metric that measures returns before administration fees have been deducted. Administration fees are a compulsory price that members must pay to gain access to superannuation products. Moreover, they can vary to a significant degree. Minister Hume has justified the exclusion of administration fees on the basis that performance test is a measure of investment management.¹⁶ This narrow view of performance ignores the impact of administration fees on retirement balances and cannot be justified.

¹⁵ Your Future, Your Super, reforms to make your super work harder for you, October 2020, p. 24

¹⁶ Interview on channel 7 Sunrise, 19 February 2021

The Productivity Commission found that in 2017 the median administration fee across retail funds was 0.8 per cent, compared with 0.4 per cent across not-for-profit funds. On average, a member of a retail fund with a \$50,000 balance would pay a total administration fee of \$374 a year, compared to \$127 a year by a member of a not-for-profit fund (see Figure 1).¹⁷

Figure 1 The gap in administration fees between retail and not-for-profit funds. Productivity Commission, 2019. p175

Figure 3.15 **The gap in administration fees between retail and not-for-profit funds increases with member balances^a**

Advertised fee in dollars, APRA-regulated funds, 2017



Source	PC analysis of SuperRatings data.		
Coverage	362 products covering 78% of total assets and 76% of member accounts in APRA-regulated funds in 2017.		
Survivor Bias	Yes.	Survivor Bias	Yes.

^a These data do not include fee caps.

In addition, analysis of APRA MySuper Heatmap data by ISA indicates that use of NIR in place of NR has significant consequences for quantifying the extent of underperformance by reference to the proposed 50 basis points benchmark among certain funds. For industry, public sector and corporate funds there is little difference in levels of underperformance measured in per cent of asset terms regardless of whether NIR or NR is used. This reflects the relatively minor role that administration fees play in eroding returns to members among these funds.

However, for the retail sector the picture is quite different. Using NIR, and so excluding the impact of administration fees, 8 per cent of retail assets are in underperforming MySuper products. Using NR, and so including the impact of administration fees, results in underperformance increasing to 31 per cent. This reflects the higher average administration fees charged by many retail funds.

High administration fees can translate into materially lower balances at retirement. Cameo modelling of the impact of admin fees by ISA has found that members on average full-time earnings in those MySuper products with the ten highest rates of administration fees will on

¹⁷ *ibid*, p. 171, p. 174

average retire with \$158,000 less in their accounts than those who are members of MySuper products with the ten lowest rates.

Moreover, the proposed changes ignore the diversion of member funds by means of payments to related party entities, including above-cost payments made for the provision of administrative services. Such arrangements are common among retail funds, with profits from the related entities which provided the services ultimately being delivered to the same parent. A NR approach protects members from the hidden costs and margins that arise from this type of structure. The proposals presently are therefore not sector neutral and the proposed performance measures do not reflect what members will receive in their accounts.

ISA has long advocated for measuring and comparing product performance on the basis of a NR metric. This view has been supported by previous Government reviews including the Cooper Review and the Productivity Commission.¹⁸ The Productivity Commission reiterated as recently as Senate Estimates in October 2020 that it envisaged performance measures to include administration fees.¹⁹ Minister Hume has stated that the proposed YFYS comparison tool will show the effect of administration fees, acknowledging their importance.²⁰ It is therefore perverse that the annual performance test which the Government has asked APRA to use will exclude administration fees but the proposed online comparison tool will include administration fees. There is no reasonable basis for this differential treatment.

Given the choice of metric will have significant implications for identifying and then removing underperformance from the superannuation system, it is important the measure is subject to parliamentary deliberation and specified in legislation.

ISA Recommendation: The legislation should specify that regulations must use a Net Return measure to ensure administration fees are captured. The legislation should also define Net Return to make it clear that it includes all fees, costs and taxes.

Performance period

The Bill is silent on the period over which products should be assessed for underperformance, empowering requirements to be specified in regulation and by APRA. The Government has stated that for the purposes of the APRA performance test, products will be assessed over a seven-year period in 2021, and then eight-year periods from 2022.²¹

This assessment period is too short and does not consider how products with shorter histories will be treated and assessed. The Conexus Institute investigated the effectiveness of the proposed eight-year period for identifying underperforming funds. It found that for every 6 'poor' funds, this test will likely mis-identify one as a good performer because over

¹⁸ Super System Review Final Report (2010) Part Two: Recommendation Packages, p. 111

¹⁹ Senate Estimates, Question on Notice ref BET065, p. 491 of the report referenced by Mr Brennan..

²⁰ Interview on channel 7 Sunrise, 19 February 2021

²¹ Your Future, Your Super, reforms to make your super work harder for you, October 2020, p. 24

eight-year intervals a poor fund may experience annualised performance above the threshold level.²² This is an unacceptably high risk of false positives.

Support for a longer performance period for assessing returns is found on the Government's own MoneySmart website. The explanation given about how to choose investments uses a ten-year time frame to show average returns.²³

ISA also notes that the product dashboard requirements for MySuper products in the Corporations Act 2001 require funds to work out a return target²⁴ for a period of ten years and the return for the previous ten financial years, or the period the product was offered. There is no reason for the period over which performance is assessed in the YFYS reforms to differ from the product dashboard requirements.

In general, products should be assessed over the longest time period possible to account for risk and market cycles and to reflect that superannuation is a long-term investment. As the annual APRA test continues to be applied over time, the assessment period should be automatically extended beyond eight-years.

The Government has proposed that a listed index – specifically, the FTSE Core Developed Infrastructure Index hedged to AUD – be used to benchmark performance. This is not an appropriate benchmark for unlisted infrastructure. It will incentivise funds to build higher risk, less well diversified portfolios, and at the same time disincentivise investing in Australia.

Further, an eight-year performance period when coupled with such a listed benchmark could incentivise managers to build listed portfolios that track the index rather than portfolios that would be expected to provide better long-term net returns. This is because there is a higher probability of occasionally materially underperforming the eight-year benchmark. Such an approach will have adverse consequences for investment in Australian infrastructure and ultimately returns on members' retirement savings.

ISA Recommendation: The legislation should specify that all products should be assessed over 10 years or if the product has operated for less than 10 years, for the life of the product.

Consequences should be proportionate

The Bill provides that trustees of MySuper products that underperform their benchmarks will be required to notify members. If that underperformance persists for a second consecutive year, the product will be closed to new members. ISA's position is that no underperforming fund should form part of the default safety net.

²² <https://theconexusinstitute.org.au/wp-content/uploads/2020/11/YFYS-Detailed-Paper-20201127.pdf>, p 19-p20

²³ <https://moneysmart.gov.au/how-to-invest/choose-your-investments>

²⁴ The return target is the mean annualized estimate of the percentage rate of net return of a representative member that exceeds growth in the consumer price index over ten years.

In ISA's submission to the Retirement Income Review we make the point that in the context of a market for complex financial products members are unlikely to be able to exert sufficient demand-side pressures to force underperforming funds to improve or exit the system. Therefore, it is essential that government implement a robust default system that effectively tackles underperformance while ensuring members are continually connected to good funds as they progress through their working lives toward retirement.

Funds must meet or exceed robust and fairly applied benchmarks that are representative of market returns on a simple diversified portfolio. Good net return performance needs to be demonstrated over the long term, such as 10 years, or for the life of the product. Those funds that do not meet such benchmarks and cannot do so within a reasonable period of time should be removed by APRA.

The Bill is silent on the degree by which funds must underperform the benchmark before they face consequences, with empowering requirements to be specified in regulation and by APRA. The Government is clear that APRA should classify funds that underperform the benchmark by 50 basis points as underperforming.²⁵ However, identifying underperformance by reference to one metric (at least 50 basis points per below benchmark) does not distinguish between marginal and chronic underperformance.

It is likely that some products will underperform at the margins of the proposed measure, while others will be assessed to have substantially underperformed for some time. The resulting consequences for trustees should be proportionate to the extent and persistence of underperformance. For example, there may be a case for closing a product after one assessment by APRA, if it is found to have underperformed by 150 basis points for a significant period. There may also be a case for APRA to close a chronically underperforming fund and direct that the trustee moves current members to another fund that meets performance benchmarks.

The proposed measures should differentiate between degrees of underperformance, and how consequences should vary to better protect affected members.

ISA is also concerned that products closed to new members may become a new source of legacy product in the system. The Productivity Commission estimated that legacy products hold an estimated 3 million member accounts.²⁶ The Productivity Commission also found that:

'There is a 'tail' of choice products with high fees (exceeding 1.5 per cent of balances), offered by retail funds. This tail accounted for about 17 per cent of assets and 15 per cent of member accounts in APRA-regulated funds in 2017. Retail legacy products account for almost half of all products in the high-fee tail. The share of member accounts in the high-fee tail has been declining over time, particularly since 2013 and the introduction of MySuper, but today still accounts for an estimated 4 million member accounts holding \$275 billion in assets. Further declines are likely to

²⁵ Your Future, Your Super, reforms to make your super work harder for you, October 2020, p. 24

²⁶ Superannuation: Assessing Efficiency and Competitiveness – Inquiry report (December 2018), p. 38

hinge on the effectiveness of regulator efforts to shift members out of retail legacy products.²⁷

A similar problem was identified in the Super System Review and measures were recommended to rationalise legacy products including legislative amendments to facilitate successor fund transfers.²⁸ It is not clear from the proposed measures what will be done to ensure members of closed products that do not improve are connected to good products in a timely manner that protects them from being gouged for fees and insurance premiums. Relying on disengaged members to select another fund is a poor outcome for the reasons explained in the section above on stapling.

ISA Recommendation: The legislation should contain more stringent penalties for products that chronically and significantly underperform the proposed benchmarks. Formulas to set levels of underperformance to which different penalties apply should be set out in regulations.

²⁷ Ibid, p. 54

²⁸ Super System Review, Final Report, Recommendations 10.9 and 10.10

4. Single Default Account/Stapling

ISA supports reducing the risk of members having multiple unintended superannuation accounts. However, any changes must help connect workers with a high performing fund as they move through life and avoid them inadvertently ending up without appropriate insurance. ISA's submission on this topic is guided by the following principles:

- ▶ Members balances should be stapled to them as they move from job to job unless they choose otherwise.
- ▶ Members must not be stapled to poor performing products.
- ▶ Members must not be stapled to products that do not provide appropriate insurance for the occupations they perform

A better model of stapling

ISA has previously detailed our preferred model of stapling to the Retirement Income Review,²⁹ based on the automatic rollover of balances.

In this model each member is stapled to their balance which is automatically rolled over into their new account when they join a new employer. Only those products that have been periodically approved by an expert panel within the Fair Work Commission are permitted to be used for default purposes in awards or enterprise agreements. This is particularly important for those members in high-risk industries, such as construction, transport and the emergency services. Analysis of stapling of superannuation accounts undertaken by KPMG for ISA shows that a stapling model based on automatic rollover of balances will result in savings of \$4.3 billion from the elimination of multiple accounts and improved returns from positively connecting members to high quality products of \$133.2 billion over 10 years. A copy of the report is at **Attachment C**.

However, under the Government's proposed model of stapling, a member who is stapled to a product while working in a relatively low-risk industry such as retail, but who later moves into a higher-risk industry such as construction, will retain an insurance policy that is unlikely to cover them for death or TPD should a claim need to be made. Members are also at risk of being stapled to products that do not meet performance benchmarks. For these reasons, the Government should adopt a model of stapling based on the automatic roll over of balances.

Performance

The Government's proposed stapling framework means that from 1 July 2021 members will be stapled to a superannuation product regardless of performance. This is a perverse outcome that undermines a key objective of these reforms. There is no policy rationale for stapling Australian workers to a poor performing fund.

²⁹ ISA (2020) Submission 1: Cohesion – Underperformance and Protecting Members, p. 2, available at <https://www.industrysuper.com/assets/RIR-Submissions-and-Attachments/Retirement-Income-Review-Submission-1-Cohesion.pdf?vid=3>

Once stapled, the onus falls on each member to act in response to being stapled to a poor performing product. They will be nudged into considering taking action by being advised of underperformance if their product fails the new APRA performance tests for MySuper products in 2021 and TDPs in 2022 (to be determined by regulation). There is no policy rationale for measures that apply to TDPs to commence 12 months after measures that apply to MySuper. But in both product contexts the Government's proposed stapling framework means that from 1 July 2021 it will initially be a matter for members to resolve the problem of being stapled to a poor MySuper or Choice product.

However, we know from the findings of the Productivity Commission inquiry into superannuation that many members of MySuper and Choice products are disengaged from their super and struggle to understand basic financial terminology. The Commission reported:

'Close to 60 per cent of members do not understand their fees and charges, and about 40 per cent lack an understanding of basic investment options (such as growth, balanced and conservative). This reflects broader trends: about 30 per cent of Australians have low financial literacy, and a quarter do not understand basic financial concepts.'³⁰

That most members do not understand their fees, and a quarter 'do not understand basic financial concepts', should warn against assuming that the proposed online Your Super comparison tool will be as effective in promoting member engagement and good choices as the Government appears to believe. We note that the Productivity Commission found that historically, fewer than 10 per cent of members switch funds each year and around half of that switching is passive – occurring because members change employer or an employer changes funds.³¹ Data therefore suggests a remote likelihood of members taking action to choose a better performing fund.

The risk that many members will be stapled to poor products and remain there for too long with harmful financial consequences, is considerable. Cameo modelling by the Productivity Commission estimated that a member receiving the median bottom quartile fund return over the course of their working life would retire with \$660,000 less than a member who received the median top quartile return.³²

While we advocate for a model based on the automatic rollover of balances described above, should the Government proceed with its current model, members must not be stapled to poor performing products. To better protect members from the risks that will result from stapling all members to their current product on 1 July 2021, ISA believes that stapling to any product should take place only if the product has been tested by APRA and found to have not underperformed.

³⁰ Productivity Commission, Superannuation Inquiry Final Report, p. 21

³¹ Ibid, p. 245

³² Ibid, p. 11

ISA Recommendation: The Government should adopt a stapling model based on the automatic rollover of balances. Should the Government proceed with its current model, members should only be stapled to those funds that have proven they can deliver for members, by being assessed as not underperforming under the Government’s proposed performance framework. The definition of ‘stapled fund’ in the legislation should be a fund that has passed the annual performance benchmark.

Appropriate insurance

Stapling members to products risks members being stapled to products that do not provide appropriate insurance for the occupations they perform. This poses a significant risk for members who commence work in a low-risk industry and subsequently move to a high-risk industry as they are unlikely to receive appropriate cover for the risks they confront.

- ▶ Analysis of Australian Bureau of Statistics data shows that 27.2 per cent of people under age 25 work in high-risk occupations.³³
- ▶ Analysis by the Institute of Actuaries shows that as at 2016/17 (the most recent data available), it is estimated that around 2.7 million people were working in the riskiest quintile of Australian occupations, according to SafeWork data³⁴. **Attachment D** contains a breakdown of these occupations by number of workers.

Acknowledgement of these valid concerns prompted the inclusion of a ‘dangerous occupation’ exemption from the Putting Members’ Interests First reforms that were designed to protect members’ account balances from erosion from insurance premiums for cover that members may not want or need.

The issues with member disengagement described above are also relevant to the selection of funds with appropriate insurance. Stapling members to products with inappropriate insurance in the hope they act in response and choose another fund with better targeted insurance for their occupation does not amount to adequate protection. Ironically, failing to address this issue risks some members paying for insurance that does not meet their needs – an issue that the Putting Members’ Interests First reforms sought to address.

While we advocate for a model based on the automatic rollover of balances described above, should the Government proceed with its current model, members must not be stapled to products with insurance that does not meet their needs. To better protect members, ISA believes members should receive insurance cover appropriate to their occupation, particularly if they undertake a dangerous or high-risk occupation.

³³ ISA analysis of the ABS Survey of Income and Housing 2015-16 Confidentialised Unit Record File.

³⁴ Figures are based on analysis of Safe Work Australia’s Work-related Traumatic Injury Fatalities data from 2016 and 2017 (the most recent available for each occupation), as set out in Tables 1 & 2, Actuaries Institute Information Note - Dangerous Occupation, November 2019, <https://www.actuaries.asn.au/Library/Standards/MultiPractice/2019/INFinaltoAI261119.pdf>

ISA Recommendation: The legislation should include a safeguard for employees who work in dangerous or high-risk occupations. This will ensure that employees who have not chosen a fund and are employed in dangerous or high-risk occupations are provided with appropriate insurance cover and do not pay for inappropriate or inadequate cover.

Multiple accounts

While the Government intends that stapling members to their product will prevent the creation of new unintended multiple accounts going forward from 1 July 2021, there are no proposals to deal with the existing stock of multiple accounts. The Productivity Commission estimated that there were about 10 million such accounts in 2018, eroding balances by \$2.6 billion a year in unnecessary fees and insurance.³⁵

Some low balance inactive accounts will be dealt with under the Protecting Your Super measures and the *Treasury Laws Amendment (Reuniting More Superannuation) Bill 2020* which allow the ATO to reunite amounts it receives from eligible rollover funds with a member's active account. Both reforms will assist in reducing multiple accounts. However, many will remain. The Commission recommended increasing the balance threshold for auto-consolidation over time (Recommendation 5). The Government has yet to accept this recommendation, or to make alternative proposals.

ISA Recommendation: The Government should include measures in these reforms to tackle the full stock of unintended multiple accounts by increasing the balance threshold for auto consolidation as recommended by the Productivity Commission.

³⁵ Ibid, p. 2

5. Recommended changes

Best financial interests

Measure	Problem	ISA Recommendation
Trustees of funds must perform their duties in the best financial interests of members.	All payments made by or on behalf of a fund such as payments to related entities and dividends are not captured.	The legislation should be amended to ensure that the Best Financial Interests duty applies to all expenditure including all payments, charges, dividends, fees or arrangements made by or on behalf of the fund including payments to related or connected entities. An example should also be included in the Explanatory memorandum showing how these fees and payments will likely be assessed in light of the duty.
Regulations may prohibit or place restrictions on trustees from making certain payments or investments or place additional requirements on trustees.	The use of Regulations to ban payments and investments that are in members' best financial interests is unnecessary, overreach, not in members best interests and open to misuse.	The Government should remove the power to make regulations prohibiting or placing conditions on payments and investments and placing additional requirements on trustees.
Trustees bear the evidential burden of demonstrating that they have met the best financial interests duty. Regulations may set additional requirements for record keeping. Failure to meet these requirements is a strict liability offence.	The enhanced record-keeping requirements when coupled with a reversed evidentiary burden, no materiality threshold and strict liability will come at a cost to members with no additional benefit.	The Government should apply a materiality threshold to the additional record keeping obligations placed on funds through operating standards.

Addressing Underperformance in Superannuation

Measure	Problem	ISA Recommendation
APRA must conduct an annual performance test for MySuper products and other Trustee Directed Products specified in regulations.	Choice and pension products are not captured.	The legislation should be amended to ensure that all APRA regulated superannuation products (other than defined benefit products) are subject to performance benchmarking.
No measure. Regulations will specify the requirements for the performance metric that APRA will use.	The metric used to assess performance will not be subject to parliamentary debate and approval.	The legislation should specify that regulations must use a Net Return measure to ensure administration fees are captured. The legislation should also define Net Return to make it clear that it includes all fees, costs and taxes.
Trustees of funds who fail an annual performance test must notify members of the failure. Trustees of superannuation products who fail the performance test in two consecutive years are prohibited from accepting new members.	The legislation imposes the same consequences regardless of the degree by which a fund underperforms the benchmarks.	The legislation should include more stringent penalties for products that chronically and significantly underperform the proposed benchmarks. Formulas to set levels of underperformance to which different penalties apply should be set out in regulations.
No measure. Regulations will specify the requirements for the period over which APRA will assess funds.	The period over which performance will be assessed will not be subject to parliamentary debate and approval.	The legislation should specify that all products should be assessed over 10 years or if the product has operated for less than 10 years, for the life of the product.

Single Default Account

Measure	Problem	ISA Recommendation
<p>The stapling and the underperformance measures are proposed to commence at the same time.</p>	<p>Members are at risk of being stapled to poor performing products</p>	<p>The Government should adopt a stapling model based on the automatic rollover of balances. Should the Government proceed with its current model, members should only be stapled to those funds that have proven they can deliver for members, by being assessed as not underperforming under the Government’s proposed performance framework. The definition of ‘stapled fund’ in the legislation should be a fund that has passed the annual performance benchmark.</p>
<p>Employers are required to make contributions on behalf of an employee to the employee’s existing ‘stapled fund’, unless the employee chooses another fund.</p>	<p>Members are at risk of being stapled to products that do not provide appropriate insurance for the occupations they perform. Members are therefore at risk of paying for inappropriate or inadequate cover.</p>	<p>The legislation should include an exemption for employees who work in dangerous or high-risk occupations. This will ensure that employees who have not chosen a fund and are employed in dangerous or high-risk occupations are provided with appropriate insurance cover and do not pay for inappropriate or inadequate cover.</p>
<p>No measure</p>	<p>Stapling alone will not solve the problem of unwanted multiple accounts.</p>	<p>The Government should include measures in these reforms to tackle the full stock of unintended multiple accounts by increasing the balance threshold for auto consolidation as recommended by the Productivity Commission.</p>

Attachment A - Regulator powers

Both APRA and ASIC already have extensive supervisory powers that have recently been significantly expanded. These new powers can be used quickly and effectively.

APRA powers

APRA's administers its responsibilities through a prudential lens reflecting the SIS trustee covenants in the Superannuation Industry (Supervision) Act 1993 (SIS Act) to exercise its powers and perform its duties in the best interests of beneficiaries. The core provisions of SIS centre on the covenants in Sections 52 and 52A¹. These covenants (along with various prudential standards) enable APRA to prevent a trustee from engaging in an expenditure or an investment that is not in members' best financial interests.

As well as prudential standards, APRA has a large range of enforcement powers including disqualification orders, enforcement undertakings and commencing civil proceedings for breach of the sole purpose test

Recent amendments to the SIS Act provided APRA with comprehensive directions powers.²

APRA now has the power to direct the RSE licensee to do a broad range of things, including, where it has reason to believe that the direction is necessary in the interests of beneficiaries of the superannuation fund³ or failing to issue a direction would materially prejudice the interests or reasonable expectations of the beneficiaries of the fund⁴. APRA's powers include making a direction:

- To comply with SIS, associated regulation, prudential standards, or the *Financial Sector (Collection of Data Act) 2001*
- Not to accept or cease to accept contributions from any member (new or existing) permanently or temporarily
- not to borrow any amount
- not to pay or transfer any amount or asset to any person, or create obligations (contingent or otherwise) to do so
- to remove a responsible officer and to ensure that the responsible officer does not take part in the management or conduct of the business of the RSE licensee or the RSE except as permitted by APRA
- to remove an auditor or actuary from their role, and appoint an auditor or actuary chosen by APRA to hold their office for such term as APRA directs
- To order an audit and/or actuarial investigation of the affairs of the RSE at the expense of the RSE licensee, the auditor or actuary to be chosen by APRA

¹ In particular section 52(2)(c) and section 52A(2)(c)

² Treasury Laws Amendment (Improving Accountability & Member Outcomes in Superannuation Measures No. 1) Act 2019, with effect on or after 6 April 2019

³ SIS section 131(D)(1)(d)

⁴ SIS section 131(D)(1)(i)

- to make changes to the licensee’s “systems, business practices or operations “and
- ‘to do or refrain from doing, anything else in relation to the affairs of the licensee, the fund(s) for which that licensee is the trustee or any subsidiary’.

The use of these powers by APRA is far reaching. They could easily be used by APRA to do anything from dictating how a fund invests or divests from an asset, to removing staff or directors, to effectively shutting down an underperforming fund. Further, all that is required for APRA to invoke a direction is that APRA has reason to believe that the direction is necessary in the interests of beneficiaries⁵.

ASIC powers

ASIC also has broad enforcement powers. They include negotiating an enforceable undertaking with the superannuation trustee, commencing civil penalty proceedings against a superannuation trustee or its directors for making false and misleading statements to its members⁶ and civil penalty proceedings if trustee directors fail to act in good faith or engage in unconscionable conduct⁷ or apply for an injunction.

Most recently ASIC’s powers were expanded with the passage of The *Financial Sector Reform (Hayne Royal Commission Response) Act 2020*. The Act gives ASIC greater powers to enforce provisions of the SIS Act including sharing responsibility with APRA for the administration (supervision and enforcement) of the section 52 and section 52A covenants.

This Act also amends the Corporations Act and ASIC Act to add a new financial service ‘provide a superannuation trustee service’. The creation of this financial service broadens the scope of the conduct covered by ASIC’s existing consumer protection powers and also ensures that Corporations Act obligations, including the need to act efficiently, honestly and fairly⁸ apply to trustee activities when operating a superannuation fund.

⁵ SIS section 131D(1)(d)

⁶ ASIC Act sections 12DB, 12GBA, 12 GBC (1)

⁷ ASIC Act sections 12CA, 12CB, 12 GBA, 12GBC (1), Corporations Act sections 181(1), 1317E (1) 1317J (1)

⁸ Corporations Act Section 912A(1)(a)

Attachment B - Notes on methodology – In and out of scope

Context

Estimating the scope of the coverage of the Government's proposed *Your Future, Your Super* performance measures is challenging due to the paucity of data on the tens of thousandsⁱ of non-MySuper products and the lack of precise definitions of what constitutes a 'Trustee-Directed Product'.

However, ISA strongly believes that robust performance benchmarks are required across the superannuation system. Accordingly, we believe it is in the public interest to estimate the scope of the products that are being excluded from these benchmarks, albeit with the limitations placed upon us by the data and definitional issues outlined above.

For consumers, whether a product or investment option is included or not is vitally important for them to understand if they are in an underperforming option. In the absence of a performance benchmark applying to the product or option that they are invested in, they will never be notified that they are in an underperforming product or investment option.

Methodology

ISA analysed both APRA and SuperRatings data to estimate which assets and accounts are likely to be subjected to performance testing under the government's proposed *Your Future, Your Super* reforms.

We started by taking the overall size of the superannuation system, on an assets and accounts basis, from the APRA Annual Superannuation Bulletin for the period ending June 2019.

From these overall system aggregates we subtracted the assets and accounts associated with members who have defined benefit (DB) products from the analysis. The retirement incomes from these products are not determined by the performance of the investments, and so we did not consider them in scope for this analysis.

The remaining non-DB assets and accounts were split into the MySuper products, which are covered by Phase 1 and all other products. The data for the MySuper segment was extracted from APRA's Annual Superannuation Bulletin, the other products were estimated as the remainder of total non-DB assets and accounts. These results are shown in Table 1 and represent the in and out of scope assets and accounts for the first phase of performance testing in *Your Future, Your Super*.

Table 1: Estimated assets and accounts in and out of scope, by sector, phase 1

	In Scope - MySuper		Out of Scope - Other	
	Assets, \$b	Accounts, 000's	Assets, \$b	Accounts, 000's
Corporate	\$21	182	\$28	68
Industry	\$459	9,729	\$231	1,503
Public Sector	\$155	1,699	\$386	1,384
Retail	\$125	3,577	\$489	7,502
SMSF			\$748	1,125
Total	\$759	15,187	\$1,883	11,582

Source: ISA analysis of APRA Annual Superannuation Bulletin, June 2019. Notes: Excludes defined benefit assets or accounts.

The second phase of performance testing will be extended to Trustee Directed Products (TDP). While the precise definition of what constitutes a TDP is yet to be published, we used the public information provided by the Government to assess which non-MySuper products would be considered a TDP. We included as a TDP any multi asset class accumulation investment option, that was branded or marketed under the name of the superannuation fund entity.

We then examined all non-MySuper products that were available in the SuperRatings' Fund Crediting Rate Survey (FCRS) to estimate the volume of TDP assets. We excluded the following options from this estimate:

- Single asset class options
- Pension options

The remaining investment options and associated assets were assumed to be TDP products (Table 2). The implied average account balances from the data in Table 1 were used to estimate the number of TDP accounts.

This still leaves a considerable portion of superannuation products where there is no public information available, and therefore have not been included as trustee-directed products. However, products for which there is data available are more likely to exhibit positive performance characteristics (survivor bias), as was found by the Productivity Commissionⁱⁱ. We have assumed that it is extremely unlikely that there would be trustee-directed products that would not make data available on their performance to ratings agencies.

Table 2: Estimated TDP assets and accounts, June 2019

	Assets, \$b	Estimated Accounts (000s)
Corporate	\$5.1	12
Industry	\$133.7	869
Public Sector	\$52.6	189
Retail	\$62.7	961
Total	\$254.1	2,031

Source: ISA analysis of SuperRatings Fund Crediting Rate Survey, June 2019. Notes: Excludes defined benefit assets or accounts.

The final step of the analysis was to add the amounts from Table 2 to the in-scope values in Table 1 and readjust the out-of-scope figures. The final table is shown below.

Table 3: Estimated assets and accounts in and out of scope, by sector, phase 2

	In Scope		Out of Scope	
	Assets, \$b	Accounts, 000's	Assets, \$b	Accounts, 000's
Corporate	\$26	194	\$23	56
Industry	\$592	10,598	\$98	634
Public Sector	\$207	1,888	\$333	1,195
Retail	\$188	4,538	\$427	6,541
SMSF			\$748	1,125
Total	\$1,013	17,218	\$1,629	9,551

Source: ISA analysis of APRA Annual Superannuation Bulletin, June 2019 and SuperRatings Fund Crediting Rate Survey, June 2019.
Notes: Excludes defined benefit assets or accounts.

^{i ii} Productivity Commission Review into the Efficiency and Competitiveness of Australia's Superannuation System, 2019

Attachment D - Size of the 'Riskiest Quintile Of Australian Occupations' Workforce

In January 2021, there were 12,939,900 people employed in Australia.¹

As at 2016/17 (the most recent data available), it is estimated that around 2.7 million people were working in the riskiest quintile of Australian occupations², according to SafeWork data³.

Riskiest quintile of Australian occupations⁴ based on SafeWork data on both rates of serious injury and death⁵	Number of workers by occupation as at 2016/17
Construction and Mining Labourers	180,556
Other Labourers	234,568
Construction Trades Workers	388,889
Electrotechnology and Telecommunications Trades Workers	250,000
Automotive and Engineering Trades Workers	333,770
Machine and Stationary Plant Operators	162,791
Mobile Plant Operators	130,435
Road and Rail Drivers	354,839
Skilled Animal and Horticultural Workers	133,333
Farm, Forestry and Garden Workers	120,805
Farmers and Farm Managers	155,556
Protective Service Workers	142,749
Health and Welfare Support Workers	131,883
Total workers in riskiest quintile of Australian occupations as at 2016/17: 2,720,174	

¹ Labour Force, Australia, Headline estimates of employment, unemployment, underemployment, participation and hours worked from the monthly Labour Force Survey, <https://www.abs.gov.au/statistics/labour/employment-and-unemployment/labour-force-australia/latest-release>

² Reference to this metric as a means for assessing whether or not a worker had a special need for death and TPD insurance, including under the age of 25, originated in *Treasury Laws Amendment (Putting Members' Interests First) Bill 2019 – s 68AAF "Dangerous occupation exception"*, https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r6331

³ Figures are based on analysis of Safe Work Australia's Work-related Traumatic Injury Fatalities data from 2016 and 2017 (the most recent available for each occupation), as set out in Tables 1 & 2, Actuaries Institute Information Note - Dangerous Occupation, November 2019, <https://www.actuaries.asn.au/Library/Standards/MultiPractice/2019/INFinaltoAI261119.pdf>

⁴ ANZSCO - Australian and New Zealand Standard Classification of Occupations First Edition, Revision 1, [https://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/DF6EC104F9730D3ECA2575DF001CB71D/\\$File/12200_first%20edition%20revision%201.pdf](https://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/DF6EC104F9730D3ECA2575DF001CB71D/$File/12200_first%20edition%20revision%201.pdf)

⁵ Excludes deaths attributable to diseases, natural causes, suicides and deaths of people undertaking criminal activity.

Dangerous Occupation Sub Major Groups – List of Detailed Occupations (ANZSCO)

Construction and Mining Labourers	Autoglazier	Electrician (General)
Construction and Mining Labourers	Exhaust and Muffler Repairer	Electrician (Special Class)
Building and Plumbing Labourers	Radiator Repairer	Lift Mechanic
Builder's Labourer	Tyre Fitter	Airconditioning and Refrigeration Mechanic
Drainage, Sewerage and Stormwater Labourer	Printer's Assistant	Electrical Linesworker \ Electrical Line Mechanic
Earthmoving Labourer	Printing Table Worker	Technical Cable Jointer
Plumber's Assistant	Recycling or Rubbish Collector	Business Machine Mechanic
Concreter	Vending Machine Attendant	Communications Operator
Fencer	Bicycle Mechanic	Electronic Equipment Trades Worker
Insulation and Home Improvement Installers	Car Park Attendant	Electronic Instrument Trades Worker (General)
Building Insulation Installer	Crossing Supervisor	Electronic Instrument Trades Worker (Special Class)
Home Improvement Installer	Electrical or Telecommunications Trades Assistant	Cabler (Data and Telecommunications)
Paving and Surfacing Labourer	Leaflet or Newspaper Deliverer	Telecommunications Cable Jointer
Railway Track Workers	Mechanic's Assistant	Telecommunications Linesworker \ Telecommunications Line Mechanic
Railway Track Worker	Railways Assistant	Telecommunications Technician
Structural Steel Construction Workers	Sign Erector	
Construction Rigger	Ticket Collector or Usher	
Scaffolder	Trolley Collector	
Steel Fixer	Road Traffic Controller	
Structural Steel Erector		
Crane Chaser	Construction Trades Workers	
Driller's Assistant	Bricklayer	Automotive and Engineering Trades Workers
Lagger	Stonemason	Automotive Electrician
Mining Support Worker	Carpenter	Motor Mechanic (General)
Surveyor's Assistant	Joiner	Diesel Motor Mechanic
	Floor Finisher	Motorcycle Mechanic
	Painting Trades Worker	Small Engine Mechanic
	Glazier	Blacksmith
Other Labourers	Fibrous Plasterer	Electroplater
Freight and Furniture Handlers	Solid Plasterer	Farrier
Freight Handler (Rail or Road)	Roof Tiler	Metal Casting Trades Worker
Truck Driver's Offsider	Wall and Floor Tiler	Metal Polisher
Waterside Worker	Plumber (General)	Sheetmetal Trades Worker
Shelf Fillers	Airconditioning and Mechanical Services Plumber	Metal Fabricator
Shelf Filler	Drainer \ Drainlayer	Pressure Welder
Caretakers	Gasfitter	Welder (First Class) (Aus)
Deck Hand	Roof Plumber	Aircraft Maintenance Engineer (Avionics)
Fishing Hand		
Handyperson	Electrotechnology and Telecommunications Trades Workers	
Motor Vehicle Parts and Accessories Fitter (General)		

Aircraft Maintenance Engineer (Mechanical)
Aircraft Maintenance Engineer (Structures) Fitter (General)
Fitter and Turner
Fitter-Welder
Metal Machinist (First Class)
Textile, Clothing and Footwear Mechanic
Metal Fitters and Machinists
Engraver
Gunsmith
Locksmith
Precision Instrument Maker and Repairer
Saw Maker and Repairer
Watch and Clock Maker and Repairer
Engineering Patternmaker
Toolmaker
Panelbeater
Vehicle Body Builder
Vehicle Trimmer
Vehicle Painter

Machine and Stationary Plant Operators

Clay Products Machine Operator
Concrete Products Machine Operator
Glass Production Machine Operator
Stone Processing Machine Operator
Clay, Concrete, Glass and Stone Processing Machine Operators
Industrial Spraypainter
Paper Products Machine Operator
Sawmilling Operator
Other Wood Processing Machine Operator
Photographic Developer and Printer
Plastic Cabling Machine Operator

Plastic Compounding and Reclamation Machine Operator
Plastics Fabricator or Welder
Plastics Production Machine Operator (General)
Reinforced Plastic and Composite Production Worker
Rubber Production Machine Operator
Sewing Machinist
Footwear Production Machine Operator
Hide and Skin Processing Machine Operator
Knitting Machine Operator
Textile Dyeing and Finishing Machine Operator
Weaving Machine Operator
Yarn Carding and Spinning Machine Operator
Textile and Footwear Production Machine Operators
Chemical Production Machine Operator
Motion Picture Projectionist
Sand Blaster
Sterilisation Technician
Crane, Hoist and Lift Operator
Driller
Miner
Shot Firer
Engineering Production Worker
Boiler or Engine Operator
Bulk Materials Handling Plant Operator
Cement Production Plant Operator
Concrete Batching Plant Operator
Concrete Pump Operator
Paper and Pulp Mill Operator
Railway Signal Operator
Train Controller

Waste Water or Water Plant Operator
Weighbridge Operator

Mobile Plant Operators

Agricultural and Horticultural Mobile Plant Operator
Logging Plant Operator
Earthmoving Plant Operator (General)
Backhoe Operator
Bulldozer Operator
Excavator Operator
Grader Operator
Loader Operator
Forklift Driver
Aircraft Baggage Handler and Airline Ground Crew
Linemarker
Paving Plant Operator
Railway Track Plant Operator
Road Roller Operator
Streetsweeper Operator

Road and Rail Drivers

Chauffeur
Taxi Driver
Bus Driver
Charter and Tour Bus Driver
Passenger Coach Driver
Train Driver
Tram Driver
Delivery Driver
Truck Driver (General)
Aircraft Refueller
Furniture Removalist
Tanker Driver
Tow Truck Driver

Skilled Animal and Horticultural Workers

Dog Handler or Trainer
Horse Trainer
Pet Groomer
Zookeeper
Kennel Hand
Animal Attendants and Trainers
Shearer

Veterinary Nurse
Florist
Gardener (General)
Arborist
Landscape Gardener
Greenkeeper
Nurseryperson

Farm, Forestry and Garden Workers

Aquaculture Worker
Fruit or Nut Farm Worker
Fruit or Nut Picker
Grain, Oilseed or Pasture Farm Worker (Aus)
Vegetable Farm Worker (Aus)
Vegetable Picker
Vineyard Worker
Mushroom Picker
Crop Farm Workers
Forestry Worker
Logging Assistant
Tree Faller
Garden Labourer
Horticultural Nursery Assistant
Beef Cattle Farm Worker
Dairy Cattle Farm Worker
Mixed Livestock Farm Worker
Poultry Farm Worker
Sheep Farm Worker
Stablehand
Wool Handler
Mixed Crop and Livestock Farm Worker
Hunter-Trapper
Pest Controller

Farmers and Farm Managers

Aquaculture Farmer
Cotton Grower
Flower Grower
Fruit or Nut Grower
Grain, Oilseed or Pasture Grower \ Field Crop Grower
Grape Grower
Mixed Crop Farmer
Sugar Cane Grower

Turf Grower
Vegetable Grower (Aus)
Crop Farmers
Apiarist
Beef Cattle Farmer
Dairy Cattle Farmer
Deer Farmer
Goat Farmer
Horse Breeder
Mixed Livestock Farmer
Pig Farmer
Poultry Farmer
Sheep Farmer
Livestock Farmers
Mixed Crop and Livestock Farmer

Protective Service Workers

Defence Force Member
Emergency Service Worker
Fire Fighter
Detective
Police Officer
Prison Officer
Alarm, Security or Surveillance Monitor
Armoured Car Escort
Crowd Controller
Private Investigator
Retail Loss Prevention Officer
Security Consultant
Security Officer
Security Officers and Guards

Health and Welfare Support Workers

Ambulance Officer
Intensive Care Ambulance Paramedic (Aus)
Dental Hygienist
Dental Prosthetist
Dental Technician
Dental Therapist
Diversional Therapist
Enrolled Nurse
Mothercraft Nurse
Aboriginal and Torres Strait Islander Health Worker

Kaiawhina (Hauora) (Maori Health Assistant)
Massage Therapist
Community Worker
Disabilities Services Officer
Family Support Worker
Parole or Probation Officer
Residential Care Officer
Youth Worker