



AUSTRALIAN INSTITUTE of  
SUPERANNUATION TRUSTEES

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General Manager, Policy Development  
Policy and Advice Division  
Australian Prudential Regulation Authority  
GPO Box 9836  
SYDNEY NSW 2001

**Email:** PolicyDevelopment@apra.gov.au

Dear Sir/Madam,

**RE: Draft Prudential Standard CPS 511 Remuneration**

**In brief:**

AIST concurs with the proposal that the board of APRA-regulated entities should be responsible for the remuneration framework and its effective application. We support the principle that remuneration outcomes must be commensurate with performance and risk outcomes and that higher standard must be met for key roles.

AIST is concerned that the content of the revised draft Standard is overly focused on issues related to ADIs and APRA-regulated insurance entities and does not consider the different remuneration features of RSE licensees. Many of the specific requirements in the draft standard introduce complexity and cost in an already highly regulated sector and our concerns are that this will make it more difficult to deliver on members' best interests.

**About AIST**

The Australian Institute of Superannuation Trustees ("AIST") is a national not-for-profit organisation whose membership consists of the trustee directors and staff of industry, corporate and public sector superannuation funds.

As the principal advocate and peak representative body for the \$1.4 trillion profit-to-members superannuation sector, AIST plays a key role in policy development and is a leading provider of research.

AIST advocates for financial wellbeing in retirement for all Australians regardless of gender, culture, education, or socio-economic background. Through leadership and excellence, AIST supports profit-to-member funds to achieve member-first outcomes and fairness across the retirement system.

The Australian Institute of Superannuation Trustees (**AIST**) welcomes the opportunity to respond to the **Prudential Standard CPS 511 Remuneration**. AIST supports a new and more robust prudential standard on remuneration arrangements.

AIST is concerned that the content of the revised draft Standard is overly focused on issues related to ADIs and APRA-regulated insurance entities and does not consider the different remuneration features of RSE licensees.

Commissioner Hayne stated that variable remuneration had helped drive poor customer outcomes in financial services, but his comments were not targeted at the profit to member (P2M) superannuation sector.

The P2M superannuation sector's member-based ethos is different to the other sectors that CPS 511 covers. In addition, variable remuneration is less common<sup>1</sup> and less complex in the profit-to-member superannuation sector (regardless of their SFI status).

AIST supports strong prudential standards and recognises that remuneration structures can impact culture, conduct and performance. However, variable remuneration is only one lever to help facilitate a desirable culture.

Many of the specific requirements in the draft standard introduce complexity and cost in an already highly regulated sector and our concerns are that this will make it more difficult to attract and retain talent and deliver on members' best interests.

In addition to these general observations, this submission provides feedback on the following topics:

1. Deferral and vesting
2. Consistency in terminologies for roles
3. Material weight for non-financial measures
4. Remuneration framework
5. Risk adjustment, clawback and malus
6. Disclosure requirements

## AIST REMUNERATION SURVEY

A survey conducted by AIST in 2019 indicated that 61% of profit-to-member funds do not employ variable remuneration. The survey indicated that for those funds that do offer variable pay, almost all offer it to the investment function. Non-deferred short-term incentives are the most common variable pay plan amongst the group that offer variable pay, however several of the funds surveyed defer short term incentives up to three years and most prevalent for executives and for the investment job family. Malus provisions are more common than clawback. Funds do not see clawback provisions to be workable in practice unless case precedence were to be established in Australia.

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<sup>1</sup> See box "AIST Remuneration Survey".

## 1. Deferral and Vesting

AIST has several specific concerns. In Section 52, the Standard indicates that “the deferral period must include the period over which performance is assessed, only where the measures of performance are forward-looking.” Section 52 has given rise to considerable confusion and concern about what “forward-looking measures” are and what performance metrics are allowed.

**Funds are concerned that the link between investment returns for members and metrics for evaluating whether any variable remuneration is paid could be discouraged by the Standard.** For example, there is a concern that 3, 5 and 10-year performance metrics used in remuneration would be discouraged under the Standard as they would be considered as giving a ‘free kick’ to employees who were not on board for the whole of the assessment period and thus result in an additional year for the deferral period.

Linkage of investment performance over a multiple year timeframe can address APRA’s concerns that remuneration reflects the time horizon of risk and ensures sufficient time has occurred to uncover misconduct risk at the same time as the financial interest and reasonable expectations of beneficiaries are met.

**There is a lack of clarity whether the active or current year is included in the deferral period. Our interactions directly with APRA have clarified this but the language in the current draft of the standard is confusing and would benefit from better drafting.**

## 2. Consistency in terminologies for roles

CPS511 is being introduced at a time when there is a plethora of legislative and prudential regulatory change impacting the superannuation sector. These include the Financial Accountability Regime (FAR), the Members Outcome Standard (SPS 515) and the 2020 Federal Budget measures. AIST is concerned that there is a lack of consistency of terminologies. For example, there are inconsistencies in terminologies used in CPS 511, FAR, SPS 515, CPS 510 and SPS 520. Complexities arise with the range of terminologies: “Specified Roles”, “Accountable Persons”, “Senior Manager”, “Responsible Persons”, “Material Risk Taker” and “Highly Paid Material Risk Taker”.

An anchoring of the terminology on the FAR would be a good way of resolving this. This would mean that any provisions targeted at the Directors, CEO or Senior Managers could be simplified by referring to “Accountable Persons”. If it is concluded that other categories are required, they should be minimized and clarified if they are considered “Accountable Persons” or not and, ideally, a “map” of how the categories fit together or differ be communicated by APRA.

In addition, there are also concerns that since CPS 511 has a deferred variable remuneration threshold of \$50,000 (irrespective of the level of responsibility) and the FAR has a principle-based concept of Responsible Managers that two different consequence management systems are being created. As an alternative, the \$50,000 threshold could be replaced by a percentage of total variable remuneration or it could be made specific for some roles in the Standard (so that it would be made consistent with the FAR).

### **3. Material Weight for Non-Financial Measures**

#### **Provide improved clarity on the definition and applicability of 'material weight'**

The increased flexibility or principle-based approach for the role of non-financial measures in remuneration is welcome, but there is concern about how 'materiality' is to be interpreted and a lack of clarity about how metrics will be categorised.

### **4. Remuneration Framework**

#### **A threshold should be set for the application of the Standard to third-party employees and contractors**

In general, the requirements for a remuneration framework and policy as outlined in the Standard are well supported except for the area regarding third-party employees and contractors. Section 20(b) requires that the remuneration policy must include "at a high level, the structure and terms of remuneration arrangements that apply to a person who is employed by or is a contractor" (of a service company for an RSE).

The terminology of 'structure' and 'terms' implies remuneration structures for a contract that the contracted company sets, however it could also mean agreed payment structures. We seek clarification on this.

In addition, there is no threshold or materiality filter specified in the Standard. Fund are wondering, for example, whether a statement from a third-party contractor stating that they are compliant with CPS 511 would be satisfactory? There needs to be specificity about fund responsibilities and to which third parties fund responsibilities apply. Otherwise, funds may not be able to implement the requirement. In addition, in relation to Section 20(b), funds have indicated that it may be challenging to meet the requirement regarding "structure" and "terms" in light of confidentiality and competition. It is more achievable and realistic that RSE licensees obtain statements confirming that contractors meet relevant requirements.

It is acknowledged that 'better practice examples' in a new CPG 511 document will be released.

### **5. Risk Adjustment, Clawback and Malus**

For funds that do not have variable pay it is more difficult to demonstrate consequence management because there are fewer levers to use. Withdrawal of opportunities for development and performance management can be used. Funds would like the guidance to cover examples of what would be acceptable.

Funds would also like to understand APRA's expectations about the linkage of any poor outcomes from a member assessment (related to SPS515) and remuneration outcomes.

Finally, there are concerns that clawback is not realistically practical. It has been attempted in Australia but has not been successful. Malus is easier and more practical to implement.

## 6. Disclosure Requirements

What principles should inform the types of information required to be disclosed for prudential purposes?

As a general point, the profit-to-member sector would like to see consistency on disclosure for all funds irrespective of what part of the industry that they belong to. This is not the case now.

There is support for the publication of **qualitative remuneration information** as extracted from the remuneration policy. Regardless of SFI status, remuneration policy should provide consistent information on remuneration objectives, adjustment tools, mix of remuneration (i.e. fixed and variable components), how targets are chosen and processes to determine remuneration outcomes.

We support consistent and standardised reporting of **quantitative remuneration information** using a proportional approach for SFI vs non-SFI's. However, public disclosures of remuneration should be limited to Accountable Person(s) who are senior enough within organisations to materially impact reputation or financial standing. Some funds have expressed concerns about public disclosure of specific performance metrics as this can change throughout the year due to agile goal setting (where goals are realigned to priorities of the business throughout the year). Public disclosures of specific performance metrics may also discourage setting commercially sensitive and strategic targets.

In relation to **quantitative remuneration outcomes**, disclosure of awarded and deferred remuneration if applicable (i.e. % of total remuneration and/or \$ amount) will provide adequate information to understand the performance and risk adjustments, across staff who have a material impact. There are many variables that determine the final awards which may include board discretion, modifiers, gateway, performance, and definition of target vs stretch measures, which makes it difficult to report on these.

How could prudential disclosures complement disclosures required under the Corporations Act?

Currently, the disclosure requirements differ amongst APRA regulated entities and even within the superannuation industry. AIST supports all entities governed by the SIS Act to provide a high-level approach that will allow consistent and standardised quantitative information. One of our funds has provided an example of how this can be done in Table 1.

Consistent and standardised quantitative information will assist fund members and the public to compare the performance of the funds more easily and be empowered to make informed decisions. We encourage APRA to provide a template to all superannuation funds to facilitate standardisation of information.

**Table 1: Current disclosures under SIS Act and proposed CPS511 disclosures**

Current disclosure under SIS Act (directors & execs)	SIS Regulations	Proposed disclosure
<b>Short-term employee benefits (for 2 most recently competed financial years)</b>		
Cash salary	2.37(1), Item 5(a)	Yes – for AP's
Fees	2.37(1), Item 5(a)	Yes – for AP's
Short-term compensated absences	2.37(1), Item 5(a)	Yes – for AP's
Short term bonuses	2.37(1), Item 5(b)	Yes – for AP's
Non-monetary benefits	2.37(1), Item 5(c)	Yes – for AP's
Other short-term employee benefits	2.37(1), Item 5(d)	Yes – for AP's
<b>Post-employment benefits (for 2 most recently competed financial years)</b>		
Pension & superannuation benefits	2.37(1), Item 6(a)	Yes – for AP's
Other post-employment benefits	2.37(1), Item 6(b)	Yes – for AP's
Termination benefits	2.37(1), Item 8	Yes – for AP's
Long-term employee benefits	2.37(1), Item 7	Yes – for AP's
<b>Other disclosures included in Remuneration report</b>		
Movements of directors & execs	2.37(1), Item 2	Yes – for AP's
Composition of remuneration: <ul style="list-style-type: none"> <li>• Short-term incentive potential</li> <li>• Short-term incentive awarded</li> <li>• Deferred remuneration</li> <li>• Total remuneration</li> </ul>	Not a SIS legislative requirement	Yes – for AP's Aggregated remuneration outcomes (not individual quantum) for other "Specified Roles"
Remuneration for past executives	For future terminations of Directors/Execs	Yes – for AP's

Would a proportional approach to disclosures, like that proposed for revised CPS511, promote market discipline for the appropriate cohort of entities?

AIST supports the proportional approach contained in the revised CPS511 however, we believe that the best interests of our members could be better met if all superannuation entities regardless of their SFI status were to adopt standard and comparable reporting of qualitative and quantitative remuneration information.

## 7. Other

### Member outcomes

Funds would like to understand APRA's expectations about the linkage of any poor outcomes from a member assessment (related to SPS515) and remuneration outcomes.

For further information regarding our submission, please contact [REDACTED], Senior Manager, Governance at [REDACTED] or [REDACTED], Head of Advocacy at [REDACTED].

Yours sincerely,

[REDACTED]

[REDACTED]

**Chief Executive Officer**