

File Name: 2017/28

29 September 2017

Committee Secretary
Senate Economics Legislation Committee
PO Box 6100
Parliament House
Canberra ACT 2600
via e-mail to: economics.sen@aph.gov.au

Dear Committee Secretary,

Re: Consultation on *Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 1) Bill 2017* and *Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 2) Bill 2017*

The Association of Superannuation Funds of Australia (ASFA) would like to lodge this submission in response to the consultation on the *Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 1) Bill 2017* and *Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 2) Bill 2017*.

ASFA is a non-profit, non-political national organisation whose mission is to continuously improve the superannuation system, so all Australians can enjoy a comfortable and dignified retirement. We focus on the issues that affect the entire Australian superannuation system and its \$2.3 trillion in retirement savings. Our membership is across all parts of the industry, including corporate, public sector, industry and retail superannuation funds, and associated service providers, representing over 90 per cent of the 14.8 million Australians with superannuation.

General observation

Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 1) Bill 2017

ASFA is appreciative of the opportunity to consult on the Bills however as there was very limited time to prepare a submission, we have also included our original submission to Treasury on the exposure draft legislation (Attachment A). This submission to the Senate Economics Legislation Committee deals with the changes to the Bills made since the first round of consultation on the exposure draft legislation.

ASFA's view is that the regulatory burden for superannuation fund trustees is already heavy and that any addition to that burden, such as the measures proposed in the Bills, should be made only where it is absolutely necessary. We acknowledge the need for the superannuation system to have a strong regulatory framework and that regulators should have appropriate powers and instruments to ensure that the system is stable, efficient and delivers on its objectives. However we are not convinced that all of the proposed

measures are absolutely necessary for APRA to perform its functions or that the additional cost of implementing the new measures is outweighed by the benefits.

As outlined in our previous submission to Treasury, this Bill will have a major regulatory impact on both industry and consumers if legislated. A Regulation Impact Statement (RIS) is essential to demonstrate due consideration of the cost and impact of each measure. We acknowledge that Treasury has conducted a RIS for annual members' meetings but we question the accuracy and reasonableness of the figures used and we still consider a rigorous RIS should be conducted for all the other measures proposed.

We are strongly concerned about:

- the regulatory and reporting burden of the operation of the annual outcomes test and its potential to add a fresh layer of compliance and reporting for trustees and confusion for superannuation fund members.
- bringing forward by a year the Portfolio Holding Disclosure requirements
- whether the proposed director penalties have adequate protections (Attachment A)
- the breadth of the proposed APRA directions powers and whether they could be more precise (Attachment A)
- the resource impact and the rationale for the proposed reporting standard (Attachment A)

Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 2) Bill 2017

ASFA supports choice of fund for workplace determinations and enterprise agreements and welcomes the exclusion for defined benefit scheme members.

We also welcome the salary sacrifice integrity proposals which will specifically include salary or wages sacrificed to superannuation in the base for calculating an employer's Superannuation Guarantee obligations.

Specific comments

ASFA would like to raise the following issues with respect to *Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 1) Bill 2017*:

1. Annual MySuper outcomes assessment

1.1. The requirement to make the outcomes test public - How many dashboards do members need?

ASFA opposes the requirement to publish the trustee's determination that it has satisfied the outcomes test (i.e. whether the financial interests of the beneficiaries of the fund who hold the MySuper product are being promoted by the trustee) and a summary of the assessment and comparisons on which the determination is based on the fund's website.

ASFA supports openness and transparency when it is useful to members but opposes this because:

- There is duplication - There is already a MySuper dashboard, prescribed by ASIC, designed to give members information about their product and a basis for comparison. While there may be potential for the existing dashboard to be improved we do not believe that there is any benefit for members from a second report or dashboard for what is meant to be a prudential tool.
- Questions over who is the audience - The Explanatory Memorandum says that 'Provision of the information in respect of how the determination is reached not only allows better understanding of context of the determination, but also facilitates improved accountability and decision-making' but it is not clear whose understanding would be enhanced or who will use the information to hold a fund to account.
- No clear benefit for members - There is in fact significant potential for the published information to be unhelpful to members. The outcomes test information will have the primary purpose of satisfying APRA and the requirements it prescribes. Members may find this perspective confusing or, even worse, misleading. It would be unfortunate if a document designed for the regulator led to unintended consequences for members.
- There is a cost and resource burden - As described above there is a significant risk that the outcomes test will be prepared with at least two audiences, APRA and the public, in mind. To avoid confusion it may make more sense for two very different versions to be prepared and this would have an even greater impact on resourcing. It is likely that some trustees will rely on external consultants for the preparation of the outcomes test with the additional costs to be borne ultimately by fund members.
- It creates confusion in the regulatory jurisdiction of APRA and ASIC. It can be argued that a published outcomes test sits much more squarely in the realm of consumer disclosure than it does in prudential regulation.

- A lack of clarity on resolving disputes between APRA and trustees in private - It is not clear what will happen when APRA disputes a trustee's published outcomes test determination. APRA will presumably apply its own standards to the outcomes test and in line with its traditional practice will keep its regulatory interventions private unless the circumstances are exceptional. However it is not obvious how a disagreement between APRA and a trustee could be resolved quietly with the trustee's determination in the public domain.

2. Annual members' meetings (AMM)

ASFA welcomes changes made to the AMM since the exposure draft legislation however we still have a number of reservations and believe that the desired benefits could be obtained with significantly less disruption and at a lower cost (using a different and more efficient method such as a web-based bulletin board).

2.1. Members' already have access to the superannuation fund trustee and executive

For the most part members are able to communicate with their superannuation fund trustee and executive satisfactorily and there are a number of member contact programs where funds make senior staff available to members through information roadshows on various topics of interest throughout the year.

2.2. Logistics and costs

We acknowledge the clarifications provided in the Bill regarding electronic notification and the softening of certain requirements, in relation to timing and trustee and executive attendance, but we still argue that the annual members' meeting will involve significant costs and fund resources which the Regulation Impact Statement (RIS) underestimates.

For example, the RIS:

- does not appear to take account of the work involved for directors and trustees in preparing for the AMM
- seems to ignore transport costs for trustees and directors to attend the meeting. This is likely to apply even where a webinar is held as it would be unwieldy for the meeting itself to have multiple locations
- makes a very modest estimate of the staff required to support a meeting (e.g. two supporting staff for a webinar)
- does not provide any costing detail for the inevitable outsourcing costs
- may have underestimated the number of AMMs required. It may be necessary for sub-funds to hold separate meetings for each sub-fund as there may be little common ground for members (this may also apply to funds with different divisions such as defined benefit schemes, or high risk occupation schemes with product features particular to the scheme). Further, one of our members has advised that they are unaware of a webinar system that could support more than 3,000 participants which could also mean the need for additional meetings should the response exceed that threshold.

It would also appear that the RIS assumes that funds will have a clean choice between physical and electronic AMMs. Any genuine attempt at using an AMM to engage members and provide opportunity to question beyond what is already available would likely require a multichannel event, especially for larger funds with broad memberships. It would require the preparation of some documentation (hard copy and online) and presentations, one or more physical locations, and either live online streaming or recording of the event. These materials and recordings would need to be communicated on the fund website, through social media and by email. A medium to large fund might also require the production of member-centric or event specific documentation and presentations, preparation time for attendees (whether or not questions are provided beforehand), a large number of hard copy notifications, 3-4 physical AMMs in high density locations, plus online reproduction of the AMM.

The RIS may also have underestimated the potential need for hard copy mail out and the associated costs. For example, where the annual members' meeting notice cannot be included in an existing mail out, because of timing, there could be significant costs for funds with a large member base. One of our members has calculated that even for one of their products where they have obtained email addresses for 75% of the membership, a one-off mail out to the remaining 25% would still cost more than \$400,000. Another member has estimated that at a minimum an AMM would cost \$350,000 and that this could rise to \$750,000 if hard copy notices were also required.

We strongly recommend that existing arrangements for member access to annual reports be maintained and that there should never be a requirement for hard copy annual reports to be provided with notices for annual members' meetings. The cost of mailing out hard copy annual reports would be enormous, bad for the environment, and given that there is access to them on a fund's website of the most marginal, if any, benefit to members.

We question how the success of the AMM is to be measured against the cost as it will be effectively impossible to link any improvement or deterioration in fund performance to the AMM.

2.3. Alternatives to the annual members' meeting

As we argued in our original submission (Attachment A) ASFA maintains that there are more flexible, efficient, simple and cheap alternatives to what is proposed. For example there could be a requirement for superannuation funds to provide an electronic bulletin board on the fund website for member enquiries, with the response potentially publicly viewable and with a requirement for superannuation funds to respond within a reasonable time limit. This mechanism would provide members with ongoing access to the executive and/or board (rather than just once a year).

ASFA does not believe that lack of access for members to have their questions answered is a significant problem due to existing member communication and support facilities in place across the industry, but we are supportive of appropriate measures that would give superannuation fund members a greater understanding of their fund's governance, operations, and investment arrangements.

3. Portfolio Holding Disclosure

ASFA supports the intent of the draft legislation on portfolio holdings disclosure and welcomes the restriction to the first non-associated entity for look through, as this will make the disclosure more

meaningful for superannuation fund members and reduce costs for funds. However, we are concerned with the proposed commencement date and we have a general concern that, despite the amendments, there is a real possibility that superannuation fund members will not find the information meaningful.

3.1. Commencement date

The deferral of trustee obligations to make information relating to investment of assets publicly available currently applies to 1 July 2019 (ASIC Class Order CO 14/443). This in practice means an effective reporting date of 31 December 2019. Our members have previously indicated that they need at least 12 months to implement any system changes required under legislation and that this 12 months period should be calculated from the time the legislation is passed including the supporting regulations. Given the time it will take to consult on the content of the regulations, some of which is highly complex, the 2018 target will not give our members enough time to make the necessary system changes.

Given that there was an existing expectation for an effective commencement date of 31 December 2019 and it is not certain when the legislation might pass ASFA supports the amendment of the proposed commencement date of 31 December 2018 back to 31 December 2019 in line with the original ASIC Class Order to give our members more time to implement these changes.

3.2. Protection of confidential information about commercially sensitive assets

While ASFA appreciates the flexibility to select up to five per cent of assets which the fund can exclude from disclosure, we are concerned this may lead to:

- the under-disclosure/non-disclosure of assets which are not commercially sensitive; and
- a large number of applications for relief to ASIC for assets whose value exceeds 5%.

ASFA considers that options to address this worth exploring include:

- establishing principles by which trustees can exempt commercially sensitive information (e.g. directly held real estate/infrastructure assets, derivatives)
- making disclosure of commercially sensitive assets non-specific (i.e. not identifying individual assets)
- identifying the asset but not disclosing the value

which would still aid transparency in terms of asset concentration and portfolio risk.

3.3. Investments which are not material

ASFA recommends that in order to make disclosure meaningful to members, there needs to be a concept of materiality carefully defined in the regulations (S.1017BB(5)(e)). This could be achieved by confining disclosure to investment options which exceed a prescribed level of FUM (dollar or percentage); disclosing assets over a minimum value; or disclosing the top 50 assets in the investment option.

ASFA would like to raise the following issues with respect to *Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 2) Bill 2017*:

4. Choice of fund for workplace determinations and enterprise agreements

4.1. Choice of fund for individuals in a defined benefit fund or scheme

ASFA supports the provisions in the Bill which would continue the current exemption from choice of fund for members of defined benefit schemes. If members of such schemes were provided with choice then they would in effect receive the benefit of a doubling up of contributions. In such schemes a member's retirement, resignation or retrenchment benefit in the fund remain unchanged even if the employer makes contributions to another fund under choice of fund arrangements. It would be an undue impost on employers to be required to make additional contributions through choice arrangements, particularly as defined benefit schemes already generally require employer support well in excess of Superannuation Guarantee obligations.

ASFA is not aware of any technical deficiencies in the proposed provisions regarding defined benefit schemes.

4.2. Choice of fund for individuals covered by collective agreements

ASFA notes that improvements in the efficiency of contributions processing (through the adoption of SuperStream) have made the right to exercise choice of fund easier. ASFA generally supports individuals having the right to exercise choice of fund unless there are special factors, such as employer and member rights and obligations in regard to defined benefit funds.

Of course it will remain open to employers who choose to make contributions in excess of the minimum required by the Superannuation Guarantee to a fund chosen by the employer.

5. Salary sacrifice integrity

Under a salary sacrifice arrangement an employee agrees to forego part of their future salary or wages in return for their employer providing benefits of a similar value. In this context ASFA considers that an employer should not be allowed to take advantage of that through reducing their Superannuation Guarantee obligations.

Accordingly ASFA strongly supports the amendments which will:

- prevent contributions made as part of a salary sacrifice arrangement from satisfying an employer's Superannuation Guarantee obligations; and
- specifically include salary or wages sacrificed to superannuation in the base for calculating an employer's Superannuation Guarantee obligations.

Conclusion

In general, ASFA is cautious about any reforms which add to the regulatory or reporting burden for its members without a clear purpose or benefit first being established.

While we can see merit in some of the proposed reforms, we have significant reservations about the requirements around an annual members' meeting and certain elements of the outcomes test proposals, in particular the requirement to publish on a fund's website.

We broadly support the choice of fund and salary sacrifice integrity proposals.

We would like to thank you for the opportunity to provide comments on the the Bills and would be happy to discuss with the Senate Economics Legislation Committee the matters raised in this submission.

Should you have any questions on any of the matters raised in this submission please do not hesitate to contact me on (02) 8079 0808 or gmccrea@superannuation.asn.au or Byron Addison on (02) 8079 0834 or baddison@superannuation.asn.au.

Yours sincerely

Glen McCrea
Chief Policy Officer