SUBMISSION

Submission to Treasury — Miscellaneous amendments to Treasury portfolio laws 2019

30 September 2019

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Via email: MiscAmendments@treasury.gov.au

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Dear Sir/Madam

Miscellaneous amendments to Treasury portfolio laws 2019

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission in response to the proposed miscellaneous amendments to Treasury portfolio laws 2019.

About ASFA

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 $2.9 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 almost 90 per cent of the 16 million Australians with superannuation.

General comments

Fee cap on low balances

In relation to Schedule 1, Part 1 of the Treasury Laws Amendment (Measures for a later sitting) Bill 2019, ASFA welcomes the amendment to paragraph 99G(1)(b) of the *Superannuation Industry (Supervision) Act 1993* (SIS Act). ASFA has recommended, and advocated for, that the fee cap should apply to exits which occur part-way through an income year and we are pleased that this is captured by the proposed amended paragraph.

Changes to paragraph 99G(1)(b) of the SIS Act require parallel changes to relevant regulation to ensure member disclosure accurately reflects the legislative amendment. In particular, Part 2, Division 1 of Schedule 10 of the Corporations Regulations 2001 requires amendment to reflect the proposed changes to paragraph 99G(1)(b) of the SIS Act. Currently, footnote 1 to the prescribed fee table only mentions that the fee cap will apply to balances at the end of an income year. There is no mention of exits during the year. The footnote to the prescribed fee table should be corrected to ensure member-facing disclosure is accurate and not misleading about the circumstances in which the fee cap will apply.

Amendments to regulation 9.50 of the Superannuation Industry (Supervision) Regulations 1994 would also be beneficial. ASFA proposes that for member exits that occur during the year, superannuation funds can have a policy to reasonably estimate indirect costs so that the excess fees over the fee cap can be refunded at the time when a member is leaving a fund. This avoids significant overheads for a trustee and provides a simpler experience for superannuation fund members. Amending regulation 9.50 of the Superannuation Industry (Supervision) Regulations 1994 to allow costs to be estimated will achieve this efficiency.

As ASFA noted in our submission to Treasury in March 2019 in relation to the Protecting Your Super package regulations and explanatory materials, we remain concerned that the annual balance test could have unintended consequences or be used to minimise fees in high balance accounts. The balance day test, or the test for the day the member ceases to hold the account, does not appear to allow for the possibility of the account having had a higher balance in the previous 12 months.

While the proposed amendment to paragraph 99G(1)(b) of the SIS Act clarifies the treatment of members that cease holding the product during the fund's income year, it does not prevent a member from 'gaming' the application of a fee cap on low balances. This is a significant concern. One protection for this would be to raise the minimum retained balance to a level higher than $6,000, such as $8,000.

Administrative efficiencies – *Superannuation (Unclaimed Money and Lost Members) Act 1999*

ASFA supports and welcomes the proposed repeals to the *Superannuation (Unclaimed Money and Lost Members) Act 1999* (SUMLM Act) to create reporting efficiencies for superannuation providers. The proposed repeals of subsections 16(2), 20QB(3) and 24C(3) of the SUMLM Act ensure unnecessary information is not reported by superannuation providers. Given the information that is required by these subsections has no value or use, reporting this information requires the unnecessary outlay of additional costs to superannuation providers.

ASFA also supports and welcomes the proposed amendment to subparagraph 20QA(1A)(b)(iv) of the SUMLM Act. As the Miscellaneous Amendments Bill Explanatory Memorandum states, it is impractical and inefficient for a member to make an election to the Commissioner rather than the superannuation provider. The Commissioner will be required to notify the superannuation provider in the event of a member election. This creates an unnecessary step in the process and is an inefficient use of resources. The proposed amendment overcomes this.

Finally, ASFA welcomes the proposed repeal of subparagraph 20QA(1A)(b)(v) of the SUMLM Act. This an inoperable and redundant provision.

Protecting Your Super – minor amendments

There are other, relatively minor, amendments that would clarify a number of adverse outcomes arising from the Protecting Your Super package that ASFA propose be added to the Miscellaneous amendments to Treasury portfolio laws 2019.

Firstly, there is no protection in the legislation or regulations for members receiving insurance benefits/payments, or whose claim is being assessed. Members with pending or active claims may be not be required to make premium payments towards their insurance policy and may not be making contributions into their superannuation account as a result of their ill-health.

ASFA recommends that members with active insurance claims be excluded under the legislation and regulation through, for example, an amendment to subsection 68AAA(6) of the SIS Act. The potential for member detriment is significant and cancelling insurance for these members is inconsistent with the stated intent of the policy, as it is difficult to argue that insurance arrangements supporting payment of benefits to the member are inappropriate.

Secondly, for amounts to be consolidated by the ATO Commissioner, the current requirement for these amounts to be transferred to an active account excludes high balance (balances of greater than $6,000) inactive accounts. That will prevent reunification even if the member has a substantial balance in another account. For example, a retired member with $100,000 in an inactive account would not be reunited with an amount held by the ATO even though the inactive account may be deliberately held.

ASFA supports the hierarchy for active accounts but considers that the regulations should be amended so that inactive accounts be recognised where there is no active account. This is so that members can benefit from the higher investment returns they are likely to receive in superannuation than the CPI return they'll receive while the funds are held at the ATO.

Commencement alignment between Acts – employers' reporting requirements

ASFA welcomes the Government's amendment to the commencement provisions of the *Treasury Laws Amendment (2018 Measures No 4) Act 2019* ("2018 Measures No 4 Act"). As ASFA noted in our submission to the Senate Standing Committees on Economics in response to their inquiry into the Treasury Laws Amendment (2019 Tax Integrity and Other Measures No. 1) Bill 2019 ("2019 Tax Integrity No. 1 Bill"), in order to ensure that the ATO receives appropriate reporting of salary sacrificed contributions it would be necessary for the Government to amend the commencement provisions of the 2018 Measures No 4 Act. That is, to link the commencement of the employer reporting requirements to the commencement of Schedule 7 of the 2019 Tax Integrity No. 1 Bill.

Protecting Your Super – account versus product

ASFA appreciates the Government's commitment to address the PYS and Putting Members Interests First (PMIF) 'account' versus 'product' issue. However, we would appreciate if the amendments could be progressed as soon as possible to provide certainty to the industry as it implements the various PYS measures and prepares for the introduction of the PMIF changes.

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If you have any queries or comments in relation to the content of our submission, please contact me on (02) 8079 0808 or Maggie Kaczmarska, Senior Policy Advisor, on (02) 8079 0849 or by email mkaczmarska@superannuation.asn.au.

Yours sincerely

Glen McCrea

Chief Policy Officer