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Mr Wayne Poels
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Dear Mr Poels

REGULATION IMPACT STATEMENT – FINAL ASSESSMENT SECOND PASS

I am writing in relation to the attached Regulation Impact Statement (RIS) prepared for Protecting Your Superannuation Package.

I am satisfied that the RIS addresses the concerns raised in your letter of 14 June 2018. Specifically, the RIS has been updated to cover the following:

General:

The RIS now includes more detail on the costing assumptions employed for determining regulatory costs as well as a summary table of the total cost of the options.

The problem:

The scope of the RIS is the impact of excessive fees, inappropriate insurance arrangements and duplication of accounts on individuals.

In your letter of 14 June you raise concerns that superannuation trustees may not be acting in the interests of members and that the Protecting Your Super Package may be addressing symptoms of this problem rather than the underlying cause.

I would like to make two points in response to these concerns. The first is that some of the problems that the Package seeks to address are a direct consequence of the current legislative framework. For example, account duplication is a consequence of the current default system that results in people opening new accounts when they change jobs while some fees for MySuper products must be applied on a uniform basis regardless of the size of a member's balance.

The second is that the Government has previously introduced legislation to strengthen the capacity of the regulator to ensure that superannuation trustees are acting in the best interests of members and address non-compliance with these obligations. The Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 1) Bill 2017, which is currently before the Senate, introduces a new outcomes test that will require MySuper trustees to assess the performance of their products on an annual basis, including their group insurance offering. APRA has indicated it will use its administrative powers to apply similar scrutiny to trustees in relation to choice products. The Bill also strengthens APRA's powers in relation to authorisation of MySuper products. It provides APRA with a new general directions power that will allow it to intervene to protect member interests. Finally, it will make

individual trustees liable to civil and criminal penalties in relation to contraventions of their duties in section 52A of the Superannuation Industry (Supervision) Act 1993. These measures will help to ensure that trustees act in the best interests of members. They complement the measures in the Protecting Your Super Package.

The need for Government action:

Government intervention is required to address the market and regulatory failure arising from the current legislative settings and lack of demand-side competitive pressure from young members and low balance account holders. This has resulted in current market outcomes not reflecting the needs of the target cohort of members.

The RIS now includes more detail on how the combination of regulatory and market failures have given rise to the need for Government action.

Options:

The RIS now defines more key terms and uses more general language in the description of concepts in the discussion of the policy options.

The three policy options remain the same. The options considered included the status quo as Option 1 which is the non-regulatory option. No further non-regulatory options were considered due to the nature of the problem. Option 1 has been expanded to provide further information of current settings.

Option 2 includes a proposal to alter the current way fees are charged for superannuation accounts (including a cap on administration and investment fees on accounts with balances below \$6,000 and banning exit fees on all accounts). Option 2 also includes proposals to address insurance arrangements for superannuation by preventing trustees from: providing opt out insurance to accounts of new members under 25 years old; accounts with balances below \$6,000; and all inactive accounts unless a member has directed otherwise. Finally, Option 2 proposes changes to the current lost and unclaimed superannuation regime. These changes require that superannuation accounts with balances below \$6,000 are transferred to the Australian Taxation Office (ATO) after 13 months of inactivity, and give the ATO legislative power to pay the balances it holds into a member's active superannuation account without the member's direction.

Option 3 includes a proposal to prevent trustees from offering any insurance to members under the age of 25 or with balances under \$6,000. In addition, a proposal to prevent trustees from charging administration and investment fees to accounts with balances less than \$6,000 is also outlined. Finally, the option includes a proposal to require all balances below \$6,000 to be transferred to the ATO after 13 months of inactivity (that is, no contributions or rollovers) which would then be held until the individual directs the ATO to consolidate accounts.

Analysis of Impacts:

The RIS now includes more information on the status quo and on potential flow-on implications of the alternative options, better supporting the overall impact analysis for each option.

Consultation:

The RIS provides greater granularity on the feedback from consultations and how this informed finalisation of the policy. This will be complemented by publication of all non-confidential submissions received by Treasury.

Option Selection:

Minor changes to the description were made for clarification. Overall, Option 2 remains the preferred approach as it provides the greatest benefit to members at the lowest regulatory burden.

The imposition of a fee cap as opposed to the option of banning all fees for accounts below \$6,000 is the preferred option as it provides protection for low balance accounts while recognising that there is an inherent cost in the provision of superannuation products.

For insurance arrangements, the proposed Option 2 offers the highest net benefit at a system and individual level. Under this approach, individuals will still have the option to request the insurance products they deem to be necessary for their personal circumstances, however will not be as readily defaulted into arrangements which could unnecessarily erode their retirement balance .

The proactive reunification by the ATO addresses inactive accounts in the system and the lack of consolidation due to the disengagement of members.

Implementation and Evaluation:

The evaluation component now includes additional information on how each of the measures will be monitored and evaluated to determine success. As the measures outlined in the RIS are being progressed in the context of other significant reviews into the competitiveness, efficiency and effectiveness of the insurance and superannuation systems - some complete, others ongoing or yet to commence - the timing and scope of future reviews into the reforms set out in the RIS would be better determined when those reviews are more advanced.

Accordingly, I am satisfied that the RIS now meets best practice consistent with the Australian Government Guide to Regulation.

I submit the RIS to the Office of Best Practice Regulation for formal assessment.

Yours sincerely



Michael Brennan
Deputy Secretary
Fiscal Group