

27/05/2021

By email:

superannuation@treasury.gov.au

Director
Retirement Income Policy Division
Treasury Langton Cres
Parkes ACT 2600

Dear Mr Maevsky,

Re: AustralianSuper submission: Your Future Your Super Regulations and associated measures consultation

AustralianSuper welcomes the opportunity to make a submission responding to draft Regulations on the Your Future Your Super package and associated measures.

AustralianSuper is Australia's largest superannuation fund and is run only to benefit members. Over 2.5 million Australians are members of AustralianSuper, with over \$213bn in member assets under management. We are the custodians of the retirement savings of more than 10% of Australia's workforce. Our sole focus is to use our size and scale to provide the best possible retirement outcomes for members and in doing so, always act in members' best financial interests.

As noted in our previous submissions on this topic, the Your Future, Your Super package appears to be directed to achieving the following policy objectives:

- Reducing multiple accounts;
- Measuring performance to members in a consistent manner that assists in comparing fund performance, and, by extension, highlighting the best and worst performers;
- Providing performance information in an accessible and relatively easy-to-understand form; and
- Ensuring that superannuation funds spend and invest members' money such that their best financial interests are served.

AustralianSuper unambiguously supports the stated policy objectives. However, we have previously provided two submissions outlining our concerns where we believe that the measures in the Your Future, Your Super package would create unintended outcomes contrary to the stated policy objectives.

Now that draft Regulations have been released, AustralianSuper confirms that its primary concerns as outlined in our earlier submissions largely remain. In particular we note:

- There are no clarifying regulations around the Best Financial Interests Duty. As set out in our submissions on the primary legislation we have considerable concern about a number of aspects of the provisions, including the lack of any reasonable materiality threshold in relation to expenditure, and the introduction of a regulation making power proscribing expenditure that may otherwise be in members' best financial interests.
- We are pleased to see that administration fees are now included in performance benchmarking; however, we reiterate our position set out in earlier submissions that the provisions should apply consistently. To that end we do not support separate benchmark fees for MySuper, and trustee directed products compared to other Choice products. All superannuation accumulation products able to accept compulsory superannuation contributions and enjoy tax concessions paid for by taxpayers, should be equally accountable proposals.
- We note that product dashboard and consequential disclosures designed to provide members with decision-making information about superannuation products are all measured using 10-year timeframes.

The draft Regulations are inconsistent in that they use 8-year timeframes for performance benchmarking. The consequence of this is inconsistent data comparisons, with scope to mislead members. Therefore, we do not support the proposed Regulations as drafted.

Commencement

We note the draft Regulations were released for consultation after consideration of the primary legislation by the Senate Committee, yet also prior to the debate and possible amendment of the principal legislation in the Senate. Given the legislation is due to commence on 1 July 2021, less than six weeks away, this places superannuation funds, employers and their advisers, in the impossible position of being required to prepare for the imminent commencement of a new regulatory framework when the Parliament has yet to determine the final shape of that framework.

Continued insistence on this timeframe places superannuation trustees at a higher level of compliance risk than is prudent given their fiduciary responsibilities and will not allow sufficient time for members to be appropriately informed of changes to the operation of the system.

The remainder of this submission details concerns in relation to the following proposed reforms contained in the Your Future Your Super Regulations:

- Portfolio Holdings Disclosure
- Annual Member Meetings

Portfolio Holdings Disclosure

AustralianSuper fully supports the principles behind the disclosure of portfolio holdings by superannuation funds and voluntarily discloses all portfolio holdings to the public, on our website, that we are able to disclose on a look-through basis. Importantly, AustralianSuper does not disclose asset values where it is not in members' best interests, or where there is a commercial in confidence arrangement.

We note the proposed Regulations giving effect to portfolio holdings disclosure were not foreshadowed in the Your Future Your Super announcement or referenced in the legislation currently before the Parliament. In their current form, the provisions will potentially harm the financial interests of superannuation fund members.

1. Disclosure of value of assets

Disclosure of values of certain directly owned property, private equity, credit risk and unlisted assets will adversely affect the financial interests of superannuation fund members who invest in those assets.

AustralianSuper is concerned that the draft requirements prescribe disclosure of values for such assets – this is disadvantageous to members and may not be in their best interests. This is because these assets are not listed or valued publicly, and are traded more rarely than listed stocks. Consequently, information disclosed to the market about asset pricing becomes inherently more sensitive and the following concerns arise:

- Providing information that allows the market to discern the carrying value of an asset is potentially disadvantageous to our membership;
- If this information was publicly available, it would impede our ability to achieve the best price for an asset in a sale process;
- It also has the potential to impede our ability to be able to invest in funds or assets where co-investors are concerned about this information being publicly available.

AustralianSuper considers that the investment in the asset itself is information that the member should know and that this information should continue to be disclosed. Disclosure of a range in relation to value of an asset should

assist members and users of this disclosure. AustralianSuper does not have any opposition to naming all the assets that it invests in on behalf of fund members.

Recommendation:

That the value of an asset held need not be disclosed in the following circumstances:

- Where disclosure of the value of the asset has the potential to disadvantage the financial interests of members investing in those assets; and
- Where the value of the asset is not otherwise known or reasonably ascertainable by the market and the public.

2. Disclosure and the removal of look-through requirements

Limiting disclosure of investments to the first non-associated entity level limits the effectiveness and meaning of portfolio holdings disclosure, as consumers will have less information about what assets their money is invested in. Information on specific assets may appear in multiple places, rather than one entry that lists a true position regarding investment in a particular asset.

The proposed regulations will remove only some of the real risk of superannuation funds being refused entry into some overseas private equity arrangements where for example, overseas fund managers did not want the value of their investments disclosed. However, the carve-out is too far-reaching and reduces meaningful disclosure of all investments, potentially undermining the objectives of portfolio holdings disclosure more generally.

Recommendation

Trustees should be able to disclose portfolio holdings disclosure on a look through basis as means of complying with portfolio holdings disclosure regulation.

3. Disclosure of derivative positions

The requirement for disclosure of derivative positions does not give the consumer an understanding of the effect of those positions in terms of risk. Consideration needs to be made about other options that would more likely enable the consumer to comprehend the net effect of the relevant derivative positions.

Recommendation

More consideration needs to be made regarding disclosure of net risk positions, and how derivative positions may offset each other – this is a factor in our portfolio holdings disclosure.

4. Disclosure of Fixed Interest and Cash investments

The draft Regulation assumes the disclosure of the name of the asset only. It does not make reference on how to best present Fixed Interest and Cash holdings – we are concerned that the presentation of a list of potentially thousands of bills with differing expiry dates and interest rates will have no special meaning to members or users and the volume of information is likely to be confusing. Our current practice is to consolidate and present information by Issuer as this is most appropriate and meaningful to members, as they will immediately understand the issuer risk.

Recommendation

Amendments to Regulations are required to enable Funds to provide more meaningful information to members in the asset naming and data roll up regarding fixed interest and cash investments, so that members can focus their attention on the Issuer of those investments with one value.

5. Disclosure of property investments

AustralianSuper has developed a disclosure model for property that includes the name of the asset, and includes a Google map reference for where the property is located. We would prefer to continue to use Google map references for disclosure of property as we have had positive feedback from members on this disclosure practice. The prescriptive approach contained in the draft Regulations would prevent such additional disclosures, even though this is achievable in a website environment and more relevant to the investing member.

Recommendation

That appropriate additional information be envisaged in the regulation drafting to foster more innovative and user-friendly disclosure of portfolio holdings.

6. Prescriptive format disclosure requirements

Given AustralianSuper already discloses our current portfolio holdings biannually and publicly, we are concerned that the prescriptive format disclosure requirements in the Regulations are costly and burdensome, coupled with some potentially misleading disclosure outcomes which have little benefit to users. The concerns are as follows:

- The format disclosure requirements are inherently paper based in their approach and not technologically neutral, reducing accessibility for members and others to access and interrogate the information.
- There should be a regulatory requirement for disclosure of portfolio holdings to be displayed in a searchable format. Without this, consumers will be unable to receive a comprehensible and effective disclosure of content.
- That trustees will be able to comply with these requirements by recording all information on a PDF file format and uploading it onto trustees' website. With potentially thousands of line items being produced it is difficult to see how members and consumers can easily navigate this information without a search function applying to this information.
- The Regulations require disclosure of the number, price and total value of units held by the investment option in each relevant financial product or property. The additional requirement to disclose the number of units and the price of each unit is potentially meaningless information for members. The value of units of each investment will be quite different, will be calculated differently and presumably 'created' where investments are not unitised. Unit-holdings themselves will not be referable back to the member's original investment, as they will be combined with investments in non-associated entities where assets are not disclosed. It should be sufficient to disclose the total value of the investment in the relevant asset given these surrounding circumstances.
- The presentation of disaggregated asset information misrepresents to consumers that this amount is the entire investment in the specified asset. This is clearly not the case where investments are made through non-associated entities and the assets invested therein are not disclosed.
- Consumer testing of the viability of the prescribed form of portfolio holdings disclosure is required before imposing it on superannuation funds and their members. AustralianSuper's voluntary portfolio holdings has been exposed to member navigation and use for some time now, so we are able to provide some feedback in this regard.

Recommendation:

- Review the format requirements and ensure that they are technologically neutral, and workable in a website environment and with digital mobility.
- Remove the requirement to disclose the number of units held in relevant financial products or property and the price of each unit.
- Include a requirement that the list of investments be searchable on the website for ease of consumer and researcher access and comprehension of information.
- The presentation of information should be consumer tested to ensure comprehension and accessibility for members, the key recipients of this information.

Annual Member Meetings

AustralianSuper supports members of superannuation funds being provided with information about the strategy, operations, costs and performance of their fund, including via Annual Member Meetings. To this end, AustralianSuper has held a Member Meeting each year since 2007. In addition, each year the Fund publishes an Annual Report and Financial Statements in accordance with our regulatory obligations. Copies of the Annual Report and Financial Statements are available to members and the public on the Fund website.

1 Content of Notice of Annual Member Meeting

Mandatory Annual Member Meetings necessarily come with requirements for the Notices of Annual Member Meetings. The draft Regulations place certain additional requirements on Trustees in respect of the content of the Notice of Annual Member Meeting, including additional information required to accompany the Notice of Meeting.

AustralianSuper notes that some of the additional information required to be provided by the Regulations can be provided by way of funds advising members, as part of the Notice of Meeting, where that information can be found, rather than including that information in the Notice of Meeting. This accords with the principles of technological neutrality and enables flexibility in the timely provision of accurate information.

However, the draft Regulations mandate a short form summary of certain expenditures be included with the Notice (subregulation 2.10(2) and (3) Note). This effect of this requirement will be to delay the production of the Notice, whilst the short form summary is produced.

The Regulations are silent on whether unaudited information should be disclosed to members, however, as a fiduciary, AustralianSuper is reluctant to disclose to its members unaudited information ahead of its production of audited accounts and the Annual Member Meeting.

AustralianSuper has estimated that the requirement to provide a short form summary with the Notice of Annual Member Meeting would result in one of the following impacts to members:

- the summary would contain unaudited information – whilst this is not overtly prohibited, AustralianSuper asserts that unaudited information is unacceptable for disclosure.
- the sending of member statements would be delayed; or
- a separate mail out to members with the Notice and summary of certain expenditures would need to be undertaken incurring significant costs (ultimately borne by members). For AustralianSuper we estimate this would likely be in the order of \$1m per annum.

Further, to comply with the draft Regulations funds will likely be required to amend year end accounting processes which will also incur significant additional expenditure, particularly where funds have already commenced year end process. Given the Regulations and primary legislation remain the subject of consultation and Parliamentary debate, it would be imprudent of funds to incur implementation expenditure on legislation that has not passed Parliament.

Recommendation:

The draft Regulations be amended to balance the provision of timely information to members, the provision of the Notice of Annual Member Meeting and the conduct of the Annual Member Meeting, within a reasonable timeframe after the end of the Financial Year.

To do this the Regulations should provide for the provision of the Notice of the AMM to members separate to the accessibility of additional information, including the short-form summary. Funds could be required to make the extra information accessible prior to the meeting occurring. This would ensure that significant additional costs are avoided, and the Notice is not subject to any delays that may arise from the following activities:

- Development and approval of audited accounts
- Delivery of member statements

2 Clarity and certainty on terms used

The following items as drafted are insufficiently certain, and as such should not be implemented without amendment to clarify:

- Subregulation 2.10(1)(e): It is unclear what is meant by 'main purpose' for the purpose of this provision. There is no monetary threshold. It is not clear how this disclosure requirement reconciles with payments made under commercial in confidence arrangements that were entered into prior to these Regulations commencing.
- Subregulation 2.10(1)(h) required worked examples as well as guidance on how to determine who is caught by the various provisions.

Recommendation

Exclude the above provisions to the extent that the issues above have not been addressed.

AustralianSuper would like the opportunity to discuss and provide further detailed information on a commercial-in-confidence basis regarding the potential effect of these proposals on members interests.

With this in mind, and if you have any further queries on this matter, please do not hesitate to contact Louise du Pre-Alba at lduprealba@australiansuper.com or (03) 8648 3847.

Yours sincerely



on behalf of
Sarah Adams
Group Executive
Strategy Brand & Reputation