

26 April 2019

The Treasury
Financial Services Reform Implementation Taskforce
Langton Crescent
PARKES ACT 2600

By email: FOFAGrandfathering@treasury.gov.au

Dear Sir/Madam

Re: AustralianSuper submission on the Exposure Draft Treasury Laws Amendment (Ending Grandfathered Conflicted Remuneration) draft Regulations 2019

AustralianSuper is pleased to provide a submission in relation to the abovenamed exposure draft regulations. Please note that we also support the concerns raised in the submissions made by Industry Super Australia and Australian Institute of Superannuation Trustees.

AustralianSuper is Australia's largest superannuation fund and is run only to benefit its members. The best interests of our 2.2 million members drive our decisions. We do not pay commissions to anyone to recommend us, nor do we pay dividends to shareholders. With over \$150 billion in members' assets, our sole purpose is to assist our members achieve their best possible retirement outcomes.

AustralianSuper has always supported the abolition of grandfathered commissions. Regrettably, we are unable to support the proposals contained in the draft regulations, as they do not achieve the stated goal to remove grandfathered commissions.

The Exposure Draft *Treasury Laws Amendment (Ending Grandfathered Conflicted Remuneration)* Bill is designed to implement the Government's response to recommendation 2.4 of the Final Report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, which is to repeal the provisions that allow for grandfathered conflicted remuneration.

The abovenamed draft Regulations provide a significant exception to the ban, by providing for a scheme under which "benefits that would otherwise have been paid as conflicted remuneration are rebated to affected clients."¹ However, there is no 'otherwise' in this proposal - it actually ensures that such conflicted arrangements continue unabated, and the consumer *may* be allowed some rebate if the product provider, as the 'covered person' determines that it is 'just and equitable' to do so.²

¹ Page 1 of the Exposure Draft Explanatory Materials *Treasury Laws Amendment (Ending Grandfathered Conflicted Remuneration) Regulations 2019*.

² Subregulation 7.7A.15AM(3) of the *Treasury Laws Amendment (Ending Grandfathered Conflicted Remuneration) Regulations 2019*.

AustralianSuper does not support the measures contained in the draft Regulations for the following reasons:

- Allowing conflicted remuneration to continue in Regulations supporting a Bill designed to 'end grandfathered conflicted remuneration' is disingenuous and arguably misleading to Parliament and its constituents.
- Rebating an amount of conflicted remuneration to a client, a practice proposed in the Regulations, entrenches existing grandfathered commissions and does nothing to phase them out, despite Royal Commission recommendations. Commissioner Hayne recommends that grandfathering provisions for conflicted remuneration be repealed as soon as reasonably practicable.³
- Continuing to pay commissions to advisers under this scheme will serve to ensure that some commissioned advisers continue to be remunerated in circumstances where they do not provide advice, because if they recommend a new product to their client they will lose their grandfathered commissions.
- The Regulations make it easier for an adviser to characterize their advice arrangements to take advantage of the scheme features – there is no guidance as to what “legally obliged to pay conflicted remuneration” means when the Government has already consulted on a Bill to ban grandfathered conflicted remuneration. It is assumed that an effective Bill would ensure that product providers are no longer “legally obliged to pay conflicted remuneration” given the aim of the Bill is to ban conflicted remuneration. This Bill has not been introduced to Parliament – it would be helpful for Treasury to explain how some product providers would still be “legally obliged to pay conflicted remuneration” and how such private arrangements defeat the proposals in the Bill.
- Consumers who remain in products where their adviser enjoys continuing payment of grandfathered conflicted remuneration are not assured of any certainty of a rebate simply because their adviser continues to receive conflicted remuneration under this proposal. Rather, the notion of 'just and equitable' is determined by the provider who wishes to retain both the consumer and adviser as their 'clients', having regard to matters relevant (such as the amount the consumer invested, the amount of conflicted remuneration paid to the adviser, the structure of fees etc), but seemingly not being bound to rebate to the consumer the actual amount of commissions paid to the adviser.

³ Final Report, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Volume 1, p 185

Recommendation

AustralianSuper suggests that the proposed scheme contained in these Regulations, which allows conflicted remuneration to continue to be paid to advisers, be dispensed with in its entirety. The scheme arrangements are legally imprecise, not at all transparent for affected consumers, and potentially work against consumers' best interests. They are completely at odds with the recommendations of the Hayne Royal Commission.

We note that these draft Regulations were released prior to the 8th April 2019 calling of the Federal Election, which is to be held on May 18th, 2019.

The Federal Government is in caretaker mode accordingly, and our submission should be regarded as a submission responding to any future Federal Government's proposal to continue consideration of these draft Regulations in their present form.

If you have any questions of us or would like further information please do not hesitate to contact me on 03 8648 3847 or lduprealba@australiansuper.com in the first instance.

Yours sincerely



Louise du Pre-Alba
Strategic Policy Advocate