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Inserts for

**Treasury Laws Amendment (Measures
for a later sitting) Bill 2020: Addressing
underperformance in superannuation**

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Schedule 1—Addressing underperformance in superannuation

Superannuation Industry (Supervision) Act 1993

1 Paragraph 6(1)(b)

Omit “Parts 3 and 6 (other than section 60A)”, substitute “Parts 3, 6 (other than section 60A) and 6A”.

2 Paragraph 6(1)(d)

Omit “Parts 3 and 6 (other than section 60A)”, substitute “Parts 3, 6 (other than section 60A) and 6A”.

3 Subsection 10(1)

Insert:

resolution, of an entity, means the process by which APRA or other relevant persons manage or respond to the entity:

- (a) being unable to meet its obligations; or
- (b) being considered likely to be unable, or being considered likely to become unable, to meet its obligations; or
- (c) suspending payment, or being considered likely to suspend payment;

including through the exercise of powers and functions under this Act or another law.

4 After paragraph 34C(4)(e)

Insert:

- (ea) the conduct by an RSE licensee of a registrable superannuation entity, or by a connected entity of such an RSE licensee, of the affairs of the licensee, the registrable superannuation entity, or a connected entity of the licensee, in such a way as to:
 - (i) facilitate resolution of the RSE licensee; or
 - (ii) facilitate resolution of the registrable superannuation entity; or
 - (iii) facilitate resolution of the connected entity; or

5 At the end of paragraph 52(9)(a)

Add:

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1 ; and (iv) the latest determination (if any) made by APRA under
2 subsection 60B(2) for the product;

3 **6 At the end of section 52**

4 Add:

5 *Covenants relating to regulated superannuation funds—failing*
6 *annual performance assessments*

7 (14) If the entity is a regulated superannuation fund (other than a
8 regulated superannuation fund with fewer than 5 members), the
9 covenants referred to in subsection (1) include the following
10 covenants by each trustee of the entity:

- 11 (a) to comply with subsection 60D(2) (notifying beneficiaries);
12 (b) to comply with section 60E(2) (consequences of 2
13 consecutive fail assessments).

14 **7 After Part 6**

15 Insert:

16 **Part 6A—Annual performance assessments**

17 **60B Regulator to make annual performance assessments**

18 (1) This section applies in relation to each entity that is a regulated
19 superannuation fund (other than a regulated superannuation fund
20 with fewer than 5 members).

21 (2) APRA must determine in relation to each financial year, for each
22 product covered by subsection (5) offered by the entity, whether
23 the requirement in subsection 60C(1) has been met.

24 (3) APRA must give the trustee or trustees of the entity a notification
25 of the determination. The notification must include a copy of the
26 determination.

27 (4) APRA must make the determination and give the notification:
28 (a) in writing; and
29 (b) within a period worked out under regulations made for the
30 purposes of this subsection.

31 (5) This subsection covers the following products:
32 (a) MySuper products;

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- 1 (b) any other class of beneficial interest in a regulated
2 superannuation fund, if that class is identified by regulations
3 made for the purposes of this paragraph.

4 **60C Requirements for assessment**

- 5 (1) The requirement in this subsection is met for a product in relation
6 to a financial year if the requirements set out in regulations made
7 for the purposes of this subsection are met for the product in
8 relation to the financial year.
- 9 (2) Regulations made for the purposes of subsection (1) may:
10 (a) specify requirements in respect of:
11 (i) investment returns (net of fees); and
12 (ii) any other related matter; and
13 (b) specify requirements that depend on the exercise of a
14 discretion by APRA; and
15 (c) specify matters that APRA may take into account in
16 exercising such a discretion; and
17 (d) allow APRA to make specified assumptions in exercising
18 such a discretion.
- 19 (3) Subsection (2) does not limit the scope of regulations made for the
20 purposes of subsection (1).

21 **60D Trustee to notify beneficiaries of fail assessment**

- 22 (1) This section applies if:
23 (a) APRA gives the trustee or trustees of an entity a notification
24 of a determination under subsection 60B(2); and
25 (b) the determination is that the requirement in
26 subsection 60C(1) has not been met for a product covered by
27 subsection 60B(5) offered by the entity, in relation to a
28 financial year.
- 29 (2) Each trustee of the entity must ensure that, no later than 28 days
30 after APRA gave the notification, each beneficiary of the entity
31 who holds the product is notified of the determination.
- 32 (3) The notification must:
33 (a) be in the form specified in regulations made for the purposes
34 of this paragraph; and
35 (b) contain information that:
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- (i) relates to the ranking of products according to relative fee levels, investment returns or any other criterion; and
 - (ii) is specified in regulations made for the purposes of this paragraph.

Note: Regulations made for the purposes of this paragraph may refer to regulations made for the purposes of section 348B, which may specify formulas as a basis for APRA ranking such products.

- (4) Regulations made for the purposes of paragraph (3)(b) may specify kinds of information by applying, adopting or incorporating any matter contained in an instrument or other writing, as in force or existing from time to time, if the instrument or other writing is published on a website maintained by the Australian Taxation Office.

60E Consequences of 2 consecutive fail assessments

- (1) This section applies if:
 - (a) APRA gives the trustee or trustees of an entity a notification of a determination under subsection 60B(2) that the requirement in subsection 60C(1) has not been met for a product covered by subsection 60B(5) offered by the entity, in relation to a financial year; and
 - (b) APRA gives the trustee or trustees of the entity a notification (the *second notification*) of another determination under subsection 60B(2) that the requirement in subsection 60C(1) has not been met for that product, in relation to the next financial year.
- (2) Each trustee of the entity must ensure that:
 - (a) a person who, on the day when the second notification is given, is not a beneficiary of the entity does not become a beneficiary of the entity who holds the product; and
 - (b) a person who, on that day, is a beneficiary of the entity who does not hold the product does not start to hold the product.
- (3) Subsection (2) does not apply in relation to a product if a determination made by APRA under subsection (4) is in force.
- (4) APRA may make a determination, in writing, that subsection (2) should not apply in relation to a specified product offered by a specified entity, if APRA considers that requirements specified in regulations made for the purposes of this subsection have been met in relation to the entity and product.

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- 1 (5) The determination comes into force on:
2 (a) the day on which the determination is made; or
3 (b) a later day specified in the determination.
4 (6) APRA must give a copy of the determination to the entity as soon
5 as practicable after making it.
6 (7) A determination under subsection (4) is not a legislative
7 instrument.

8 **60F Multiple products treated as one product in certain** 9 **circumstances**

- 10 (1) For the purposes of this Part, in circumstances specified in
11 regulations made for the purpose of this subsection:
12 (a) treat 2 or more products covered by subsection 60B(5)
13 (including a product that has ceased to exist) as being one
14 product (the *combined product*) covered by that subsection;
15 and
16 (b) treat anything that happened in relation to any of those
17 products as having happened in relation to the combined
18 product; and
19 (c) treat a person who holds any of those products as holding the
20 combined product.
21 (2) Regulations made for the purposes of subsection (1) may:
22 (a) specify requirements that depend on the exercise of a
23 discretion by APRA; and
24 (b) specify matters that APRA may take into account in
25 exercising such a discretion; and
26 (c) allow APRA to make specified assumptions in exercising
27 such a discretion.
28 (3) Subsection (2) does not limit the scope of regulations made for the
29 purposes of subsection (1).

30 **8 After section 348A**

31 Insert:

32 **348B Formulas for ranking products**

- 33 (1) Regulations made for the purposes of this section may specify one
34 or more formulas as a basis for APRA to rank any of the following
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1 products, or classes of the following products, according to relative
2 fee levels, investment returns or any other criterion:

3 (a) MySuper products;

4 (b) any other class of beneficial interest in a regulated
5 superannuation fund identified by regulations made for the
6 purposes of paragraph 60B(5)(b).

7 (2) Without limiting the generality of subsection (1), those regulations
8 may allow APRA to choose between 2 or more alternative
9 formulas that relate to the same class of product.

10 **9 Application**

11 (1) Subject to subitem (2), the amendments made by this Schedule apply:

12 (a) in relation to MySuper products—on and after 1 July 2021;
13 and

14 (b) in relation to other products identified by regulations made
15 for the purposes of paragraph 60B(5)(b) of the
16 *Superannuation Industry (Supervision) Act 1993*—on and
17 after 1 July 2022.

18 (2) The amendments made by items 1, 2, 3 and 4 of this Schedule apply on
19 and after the commencement of this item.

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