

18 December 2020

Manager
Retirement Income Policy Division
Treasury
Langton Cres
Parkes ACT 2600

Sent via email: superannuation@treasury.gov.au

Dear Sir/Madam

Your Future Your Super Package

Chartered Accountants Australia and New Zealand welcomes the opportunity to provide comments on the above exposure draft legislation.

Relevant background information on Chartered Accountants ANZ can be found in the Appendix.

Overall we support these proposed amendments and await to see relevant amending regulations to finalise our global view on the proposals.

Our main concern lies with one particular amendment in the proposed Best Financial Interests Amendment which we believe is too open-ended and could at some later stage be used to create onerous reporting and record keeping requirements on all superannuation entities.

Best Financial Interests Duty amendments

We refer to the proposed second amendment in Schedule 1 of the document titled, "Treasury Laws Amendment (Measures for a later sitting) Bill 2020: Best Financial Interests Duty".

We are concerned by the proposed terms of new subsection 34(2A) of the *Superannuation Industry (Supervision) Act 1993* ("SIS Act") – which says, "If standards are prescribed by the regulations for the purposes of paragraph 31(2)(n), 32(2)(g) or 33(2)(e), each trustee of a superannuation entity must ensure that those standards are, when applied to the operation of the entity, complied with at all times."

We note that paragraph 32(2)(n) creates a requirement to keep and retain records in relation to a super fund. Paragraphs 32(2)(g) or 33(2)(e) provide a similar operating standard requirements for Approved Deposit Funds and Pooled Superannuation Trusts.

Proposed sub-section 34(2B) imposes a strict liability 50 penalty unit fine for breaching this provision (currently \$11,100 for an individual or \$55,500 for a corporation).

A similar provision is then inserted in proposed new sub-section 34AA of the SIS Act that will apply to corporations that applies a potential 100 penalty unit fine.

We further note that the evidential burden of proof for breaches of the best financial interest duty are proposed to have a reverse onus of proof.

The exposure draft explanatory memorandum for the proposed record keeping requirement says: "The amendments relating to the best financial interests duty may encourage trustees and directors to keep better records to demonstrate compliance with their duties. The amendments relating to record-keeping support this by ensuring that where regulations are made to require the keeping of records, regulators are able to take a proportionate enforcement response".

Whilst at face value these points are true, we consider the proposed amendments - new subsection 34(2A) and proposed new sub-section 34AA for directors – are too open-ended and potentially permit the later creation of onerous and unnecessary record-keeping requirements on all superannuation entities which will attract significant penalties.

From a policy making perspective, there is a lack of published evidence justifying the measure and no consideration of alternative approaches (such as better enforcement of existing requirements or an educational approach, particularly for Self Managed Super Funds). We are unaware of any consultation process on this measure.

We request that these proposed amendments be narrowed to apply solely in relation to the proposed best financial interests duty. We also request that an amendment be made so that regulations cannot be made that would impose a Part 20 Division 3 penalty (administration penalty) on a Self Managed Super Fund trustee on the new record keeping requirement.

If you have any questions about this submission then please contact me on [REDACTED]

Yours sincerely,

Tony Negline
Superannuation Leader

Appendix A

Chartered Accountants Australia and New Zealand

Chartered Accountants Australia and New Zealand (CA ANZ) represents more than 128,000 financial professionals, supporting them to build value and make a difference to the businesses, organisations and communities in which they work and live.

Around the world, Chartered Accountants are known for their integrity, financial skills, adaptability and the rigour of their professional education and training.

CA ANZ promotes the Chartered Accountant (CA) designation and high ethical standards, delivers world-class services and life-long education to members and advocates for the public good. We protect the reputation of the designation by ensuring members continue to comply with a code of ethics, backed by a robust discipline process. We also monitor Chartered Accountants who offer services directly to the public.

Our flagship CA Program, the pathway to becoming a Chartered Accountant, combines rigorous education with practical experience. Ongoing professional development helps members shape business decisions and remain relevant in a changing world.

We actively engage with governments, regulators and standard-setters on behalf of members and the profession to advocate in the public interest. Our thought leadership promotes prosperity in Australia and New Zealand.

Our support of the profession extends to affiliations with international accounting organisations.

We are a member of the International Federation of Accountants and are connected globally through Chartered Accountants Worldwide and the Global Accounting Alliance. Chartered Accountants Worldwide brings together members of 13 chartered accounting institutes to create a community of more than 1.8 million Chartered Accountants and students in more than 190 countries. CA ANZ is a founding member of the Global Accounting Alliance which is made up of 10 leading accounting bodies that together promote quality services, share information and collaborate on important international issues.

We also have a strategic alliance with the Association of Chartered Certified Accountants. The alliance represents more than 870,000 current and next generation accounting professionals across 179 countries and is one of the largest accounting alliances in the world providing the full range of accounting qualifications.