C/O General Manager
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Dear Minister,

Your Super, Your Future Regulations Exposure Draft improvements.

We are responding with suggested improvements to the Your Super, Your Future Regulations Exposure Draft, after noting the Senate Economics Legislation Committee's opening comments, their report and the dissenting report's joint concerns with the Bill. Our response is focused on improvements which will provide benefits from the key perspective of **members' retirement outcomes**.

Fortunately, there are just two simple regulation additions that can address many of the concerns raised, remain consistent with the Bill's and government's intent and not cause any additional fund burden.

As the Senate committee chair highlighted "*this is a system that is not working well, and it is a system where we allow the industry to have a say on its rules, which is probably quite unusual but very generous of us. There are very few independent voices in this space, which is a concern. It makes it very difficult to get to the nub of the issues".*

The system is not working well because members' retirement balances are too low and do not provide adequately for members in retirement. After a quarter of a century, Australia's compulsory superannuation system has made limited progress in providing improved outcomes for members in retirement, and dependency on the age pension system continues to increase.

This is a very poor public policy outcome. Fixing the problem requires legislative drafters to consider other non-fund views, such as this, that are highly informed and speak from a members' retirement outcome perspective, rather than simply entrenching a *status quo* focussed on fund performance.

Regulation 2.10 Information to be included with notice.

The exposure draft requires *only an itemised list showing each payment,* be provided to members. That is of very limited value to members as there is no benchmark or basis for comparison. This depends on how many members the cost is spread over and how many years that cost, and lost earnings thereon, are compounded until their retirement.

Proposed addition

That the itemised list display:

1) Each aggregate amount divided by the number of members at the last 30 June reporting date, to display a current per member cost.

2) The expenditure impact on members retirement outcomes. This can be calculated by reference to the smallest and largest member impact and total impact on all members' projected retirement outcomes, calculated as follows.

    a) The current per member cost (above), is to be applied in a compounding formula (see ASIC retirement formula or excel) using RAFE (excluding CPI) and the funds membership ages.

Example

A fund spends $10 million on sporting sponsorships and has 10 million members.
The current regulations would require just $10 million be displayed, which has no context to members. There is a very big difference between $10 million in sponsorship funding provided by a fund with one million members, compared with the same amount spent by a fund with 10 million members.

The changed regulation would display sporting expenditure as $ 10 million in total, $1.00 per member from current balances and

1) A maximum of (circa) $7.00 retirement outcome impact for the youngest member
2) A minimum of $1.00 retirement outcome impact for a member retiring now, and
3) (circa) $50 million retirement outcome impact on the Fund in total.

In aggregate, an impact of $50 million in retirement outcomes is a significant loss for members, which ultimately leaves them worse off in providing for their retirement, unless the trustee can prove otherwise.

Explanatory Memorandum and Public Policy – Reg 2.10

This proposed change is consistent with trustees acting in members' best financial retirement interests, the Funds' current and the Bill's proposed reverse onus of proof obligations.

The trustees require only a list of member ages, the standard formula, their RAFE, CPI and the expenditure cost, plus an excel program. There is no additional cost as this should be already occurring for inclusion in Board papers.

Further, it establishes a methodology against which the directors can assess if the member retirement benefit from any proposed expenditure exceeds the retirement outcome impact.

Additionally, it will enable members, and the media to apply an informed materiality test (aka smell/pub test) to what is acceptable practice.

S60(D)(2b) **Requirements for Assessment – regulations**

The Fund Investment Performance Test currently does not adequately consider that, on some occasions, it might be inconsistent with a trustee acting in members' best financial retirement interests.

S60(D)(2b) Regulations made for the purposes of subsection (1) may specify requirements in respect of:
(a) investment returns; and
(b) any other matter (whether or not related to investment returns)

We propose an additional regulation, under part b, which should be as follows:

APRA must not make a determination a Fund has failed the performance test, if the fund has provided public evidence, to APRA's satisfaction, that confirms (using the standardised measurement RAFE techniques) that while the Fund failed the investment performance test, they have acted to increase their members' retirement balances more than another Fund that did not fail the test would have.

Explanatory Memorandum and Public Policy – S60 (D)(2b)

This proposed change is consistent with trustees acting in members' best financial retirement interests, the Funds' current and the Bill's proposed reverse onus of proof obligations.

The concerns over reverse onus of proof and reviewable Decisions, are reasonably addressed by this regulation addition.

In part, it also addresses the QSuper raised matter of the Bill not taking life-cycling and its fundamentally different whole accumulation phase construct into account. That concern is consistent with the Productivities Commissions Finding 4.3, that well designed life-cycling is better.

There are trustees that are likely to be able to prove that they acted in their members best financial retirement interests, to an extent greater than another Fund that was not banned from taking on new members. Equity, pension heads of power concerns may result if this matter is not addressed.

The evidence to APRA's satisfaction criterion, is a sensible trigger, given the information will be both public and that it should already have been created and assessed by the trustees, when those decision where made.

Yours sincerely

Douglas Bucknell
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6 May 2021
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PS. These two links to recent Financial Standard articles provide further detail.

Where did all the good people go? The problem YFYS has uncovered

YFYS doesn't solve super's accountability issue

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