# SUBMISSION

# Submission to Treasury on the *Retirement Income Covenant: Exposure draft legislation*

15 October 2021

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Director
Tax and Transfers Branch
Retirement, Advice and Investment Division
Treasury
Langton Cres
Parkes ACT 2600

Via email: superannuation@treasury.gov.au

15 October 2021

Dear Sir/Madam,

**Retirement Income Covenant: Exposure draft legislation**

The Association of Superannuation Funds of Australia (ASFA) is writing in response to your consultation on the Retirement Income Covenant Exposure Draft Legislation (Bill) and Explanatory Materials released for feedback and comment on 27 September 2021.

**About ASFA**

ASFA is a nonprofit, non-political national organisation whose mission is to continuously improve the superannuation system, so all Australians can enjoy a comfortable and dignified retirement. We focus on the issues that affect the entire Australian superannuation system and its $3.3 trillion in retirement savings. Our membership is across all parts of the industry, including corporate, public sector, industry and retail superannuation funds, and associated service providers, representing over 90 per cent of the 17 million Australians with superannuation.

**GENERAL COMMENTS**

**1. Retirement income covenant**

ASFA supports the objective of improving the retirement incomes of members.

ASFA members are supportive of the Bill being principles-based, providing flexibility to trustees.

It should be acknowledged in this context that ultimately a member's income in retirement is a result of one or more decisions made by the member alone. This is in contrast to other strategies, such as investment and insurance, where outcomes largely are a function of trustee decisions and execution.

**2. Development of a Retirement Income Strategy (RIS)**

The capacity of the covenant to achieve its stated objectives will be greatly aided by measures to address some of the challenges faced by trustees in developing a Retirement Income Strategy (RIS) for their members who are approaching retirement or are retired.

The RIS is to assist members to achieve and balance three objectives:

- maximizing their expected retirement income;
- managing expected risks to the sustainability and stability of their expected retirement income; and
- having flexible access to expected funds during retirement.

There are a couple of issues for trustees with respect to this:

- the availability of data about members
- the need for regulatory reform to enable appropriate guidance and advice to be given.

### 2.1. Availability of data

The proposed RIS is based on the view that trustees should identify and recognise the retirement income needs of their members who are approaching or in retirement.

The data currently held by trustees with respect to their members is data that is necessary to manage the fund and administer the members' benefits, either while the benefit is accruing in the accumulation phase or to pay a super income stream in retirement. ASFA members have suggested there is a need for the government to support the industry to gather more data on its members, including considering whether the current legislative constraints on this occurring are appropriate.

### 2.2. Provision of advice and guidance

If there is one time in their life when financial guidance and advice is especially beneficial to consumers it is when they are approaching or in retirement.

There are, however, barriers to the trustee's provision of effective and useful guidance and advice that need to be addressed. Accordingly, the Quality of Advice Review, to be performed in 2022, should have as a focus facilitating the provision of guidance to consumers who are approaching, or in, retirement.

Given a proportion of members are unwilling or unable to seek financial advice, the role played by tools such as calculators, projections, and cameos in providing guidance and advice will become increasingly important. Accordingly, the Quality of Advice Review should address facilitating the provision of projections, calculators, and cameos, ensuring this is done on a consistent and comparable basis.

## 3. Commencement date

Under the position paper the proposed commencement date was 1 July 2022.

Subitem 3(1) of the Bill provides that:

> The amendments of the *Superannuation Industry (Supervision) Act 1993* … apply, on and after the commencement of this [Act], in relation to a registrable superannuation entity.

The Act commences the day after it receives the Royal Assent.

Subitem 3(2) provides that:

> Despite subitem (1), a trustee of the entity is not required to have formulated a retirement income strategy or published a summary of a retirement income strategy before 1 July 2022.

Given this, we query why the commencement date of the Act is not 1 July 2022.

Further to this, members have indicated it would be helpful to have clarification in the Explanatory Materials that, while trustees will be required to publish a summary of their retirement income strategy by 1 July 2022, they do not need to have executed the components of the strategy by this time. The timely provision of guidance from APRA around this, and other aspects of complying with the requirements of the Act, will be important to enable trustees to prepare.

## SPECIFIC COMMENTS

We have some observations with respect to the development and implementation of a RIS in the Specific Comments section. Should you have any queries or comments in relation to the content of our submission, please contact me on (03) 9225 4021 or via email to fgalbraith@superannuation.asn.au.

Yours sincerely

Fiona Galbraith
Director, Policy
**The Association of Superannuation Funds of Australia Limited**

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# Specific Comments

## 1. Greater confidence to spend superannuation in retirement

### 1.1 Difficulties in planning

Planning for retirement can involve provisioning for a period of some 20 to 30 years, or even longer.

The length of time, coupled with uncertainties as to the end point and such matters as future health needs, all serve to exacerbate the difficulties in planning for retirement. There are a number of factors and risks about the future which, while they can be estimated, are unknowable.

Trustees have a role to play in improving members' understanding and management of these risks, while the Government could address some of the factors that detrimentally affect members' confidence when planning for retirement, such as when changes are made to superannuation, eligibility for the age pension and the cost of residential aged care and healthcare.

### 1.2 Barriers to new income stream products have been removed

ASFA members are appreciative of the Government having removed barriers to income stream products.

Of course, any development of new retirement income products would need to be in the members' best financial interests.

In addition, when developing and implementing a retirement income strategy, trustees will need to determine how best to comply with their obligations under the Design and Distribution Obligations regime, in particular the design and scope of the Target Market Determination for any retirement income products they may offer.

## 2. Disclosure – Projections of income streams on annual member statements

One possibility to mitigate the 'lump sum' framing of superannuation, and to encourage members to think in terms of income streams in retirement, would be to mandate the projection of income streams on members' annual benefit statements.

| Recommendation 1 |
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| • The Quality of Advice Review in 2022 should address mandating the projection of income streams on members' annual benefit statements. |

## 3. Tools – Calculators

Calculators are an extremely effective and useful tool for members.

Calculators are able to illustrate to members the implications of altering key variables on retirement outcomes. Ideally calculators should provide for the projection of different types of income streams to ensure they reflect a range of retirement strategies available to members.

| Recommendation 2 |
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| • The Quality of Advice Review in 2022 should review the regulatory framework with respect to calculators to enable them to be made available to assist members approaching and in retirement. |

## 4. Assumptions when providing guidance, advice, projections, calculators, and cameos

The scope of the Quality of Advice Review should include a holistic review of the assumptions to be used in the provision of all forms of guidance and advice, including projections, calculators, and cameos, to ensure

- there is a common set of assumptions used across all guidance
- that the assumptions do not result in potentially misleading outcomes.

The Government ideally should work with industry to address these issues. ASFA would be happy to coordinate an industry working group to work with Government on this.

| **Recommendation 3** |
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| • The Quality of Advice Review should include a holistic review of the assumptions to be used in the provision of all forms of guidance and advice. |

| **Recommendation 4** |
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| • The Government should work with industry to address the issues of assumptions to be used when providing guidance and advice. |

## *5. What does a trustee retirement income strategy look like?*

ASFA member appreciate the flexibility to develop a retirement income strategy that is suited to the particular retirement income needs of their members.

The retirement income needs of a member are a function of a complex interaction between different factors, including their age at retirement; likely life expectancy; health; relationship status; financial dependants; home ownership; other assets; other income; debt, and likely levels of expenditure.

It can be difficult for a trustee to identify the particular retirement needs of their members, as this is a function of personal information that, while it would be provided to a financial adviser, largely is unknown to the trustee, as it does not relate to the administration of the member's superannuation benefit.

It is expected that, when looking at retirement income, a trustee include superannuation drawdowns from the fund, Age Pension payments and any other income the trustee determines appropriate, including income from non-super assets, income from a partner, other income support payments and super interests outside the fund.

A trustee would not know about a member's income from non-super assets, income from a partner, other income support payments and super interests outside the fund and it is unclear how a trustee would consider other income when developing a retirement income strategy for the fund.

## *6. Retirement income strategy objectives*

### *6.1 The three retirement income strategy objectives*

ASFA supports the three retirement income strategy objectives.

Regarding the third objective – having flexible access to expected funds during retirement – we query the extent to which trustees could use publicly available data to estimate the savings and assets of their members to determine their likely need to access super savings in retirement. Given the potentially adverse consequences if a member, who does not have savings and assets, is unable to access their super in retirement it may be appropriate for trustees to be relatively conservative with respect to this objective.

### *6.2 Balancing the objectives*

Key to achieving the overall objective – of improving members' income in retirement – will be the balancing of the three objectives.

Achieving an appropriate balance between the three objectives will depend on the characteristics of the members for whom a retirement income strategy is constructed.

In this context we query the suggestion that trustees are best placed to provide distinct strategies to sub-classes based on similar characteristics and their understanding of beneficiaries. For further discussion re this issue of sub-classes in the retirement phase please refer to section 8 below.

The role of a trustee is to assist their members to manage the risks to the sustainability and stability of their retirement income, through providing guidance and support to enable the member to develop a strategy that balances the three objectives for them, based on their characteristics. Ultimately it is the member who manages the risks to the sustainability and stability of their retirement income.

## 7. Availability of data

### 7.1 Collecting information from members

Under the Australian National Privacy Principles an organisation may only collect personal information that is reasonably necessary, and directly related to, one or more of its functions or activities.

There potentially would be issues with respect to collecting information about a member's income and assets (to estimate their potential Age Pension entitlement); other super balances; partnership status; home ownership status; income support payments or the assets and income of a partner.

While an adviser would be able to collect this information from a member for the purposes of providing personal financial advice, it would be difficult to argue that any of this information is reasonably necessary for a trustee to administer the member's superannuation benefit.

Importantly, from a practical perspective, for the majority of super fund members most or all of the personal information pertaining to a member is provided by their employer when they first start contributing for them. There is little opportunity to collect information from members, most members would be unlikely to provide it and, unless the information were collected close to retirement it would soon be out of date.

We query the extent to which it would be appropriate for the trustee to collect and store extended demographic data on their membership if this information is not necessary for them to administer the members' benefits.

### 7.2 Having access to more data will better inform trustees to enable them to respond strategically

With respect to the factors that affect a member's need for income from their super, any material difference from 'average' can significantly affect a particular member's needs and, as such, there are limits to the extent to which a trustee can identify their members' income needs with any degree of precision.

To enable trustees to form a better general picture of some of these factors, consideration should be given to enabling trustees to have access to data across the Australian population, such as Centrelink data, and data with respect to their fund members, such as ATO data, on a de-identified basis.

Consideration could also be given to expanding the HILDA data collection survey to include people over age 65, to provide a richer source of data for trustees, and other stakeholders, to be able to draw upon.

**Recommendation 5**

- Consideration should be given to enabling trustees to have access to ATO and Centrelink data, on a de-identified, anonymous, basis.

**Recommendation 6**

- Consideration could be given to expanding the HILDA data collection survey to include people over age 65.

## 8. How is a trustee to determine sub-classes of members?

Dividing members into sub-classes is based members have similar, identifiable, features or characteristics.

While some matters are known to the trustee (such as age, gender, and benefit amount) there are a number of matters which are not known to the trustee (such as other super balances; expected Age Pension eligibility, partnership status or home ownership status) and, as such, they will not be able to identify which members fall into which sub-class.

### 8.1 Sub-classes in the accumulation phase versus the retirement phase

When it comes to trustees understanding their membership and constructing sub-classes of members there is a significant difference between the accumulation phase and the retirement phase.

In the accumulation phase the desired outcome for members simply is to maximise the amount of retirement benefit they accumulate, while balancing the protection afforded through the provision of insured benefits.

Cohort analysis in the accumulation phase generally is a function of age, gender, account balance, investment option(s) and level of insurance. This information generally is known to the trustee, in the course of administering the member's super benefit in the fund.

In the retirement phase each member will have considerably different objectives, financial situations and needs **–** the combined effect of which will determine the appropriate outcome for that member – that are a function of factors that largely are unknown to the trustee.

There could be two members in the fund – the same age, gender, investment option and level of insurance, with similar account balances.

In the accumulation phase clearly they would be in the same sub-class of members.

Approaching retirement phase, however, a material difference in any one of their personal circumstances – likely retirement age; life expectancy; health; relationship status; financial dependants; home ownership; other assets; income from other sources; debt; likely levels of expenditure – may mean that these two members should be in different sub-classes.

The trustee, however, would not be in a position to know this.

### 8.2 Retirement phase – relevant factors to identify meaningful sub-classes

We agree that a member's

- superannuation balance amount
- expected eligibility for the Age Pension at retirement
- partnership status
- home ownership status
- gender
- expected retirement age
- age when drawdowns are expected to begin

are relevant and appropriate factors to take into consideration when determining meaningful sub-classes for a retirement income strategy – provided the trustee has information with respect to these factors.

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| *Member's total super balance* | A trustee will not know a member's total superannuation balance – it only will be aware of the size of a member's balance in the fund. Often this will be the same, but not always. |
| *Member's expected eligibility for Age Pension at retirement* | There is a range of factors that determine a person's Age Pension eligibility that are not visible to trustees. A trustee will not know a member's expected eligibility for the Age Pension at retirement – this will be a function of their assets, income, and relationship status, none of which (with the possible exception of relationship status) will be known to the trustee. |
| *Whether member is partnered or single* | A trustee will only be aware that a member is partnered – at a particular point in time – if they have made a death benefit nomination in respect of a person whom the member has indicated is a partner.<br><br>If a member has not made a death benefit nomination, or has made it in favour of their estate, the trustee will not know whether they are partnered. Similarly, they will not know if the member has separated from the partner since making the nomination. |

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| | Importantly, even where a member has made a death benefit nomination in favour of a partner, frequently this fact is not captured in field(s) in the member database, as this is not necessary to administer the member's benefit in the accumulation phase. Should the member pass away prior to their super benefit in the fund being exhausted, thereby necessitating the payment of a death benefit, the death benefit nomination is consulted at that time. |
| *Member's home ownership status* | A trustee will not know whether a member owns their own home outright, has a mortgage or is renting. |
| *Member's gender* | Generally this information will be known to the trustee. |
| *Member's expected retirement age* | A trustee will not know a member's expected retirement age, however, they may be in a position to make a reasonable assumption about this. |
| *Member's age when drawdowns are expected to begin* | Similarly, a trustee will not know a member's age when drawdowns are expected to begin, however, they may be in a position to make a reasonable assumption about this. |

Accordingly, it is unclear the extent to which trustees will be in a position to create sub-classes of members approaching retirement, given there are a number of relevant factors that will be unknown to the trustee.

## 9. Appropriate guidance and advice

### 9.1 Barriers to providing appropriate guidance

In order to improve members' income in retirement, it is imperative that the issues surrounding the provision of guidance and advice be addressed.

The main barrier to providing appropriate guidance and assistance to members are the current requirements and obligations surrounding the provision of 'personal financial advice'.

For any guidance to be useful it needs to take into consideration the member's objectives, financial situation or needs. In so doing this means that any such guidance is at risk of being considered to be personal financial advice, including circumstances where a reasonable person may expect the guidance to have considered one or more of these things, even if it has not done so.

Any general financial advice or factual information given to a member is unable to consider the member's financial situation, need or objectives. This significantly limits the kind of guidance that can be provided to members and how useful it is to them when they are determining their own retirement income strategy.

**Recommendation 7**

- The Quality of Advice Review in 2022 should adopt a particular focus on enabling trustees to provide guidance to members approaching, or in, retirement.

### 9.2 Access to affordable advice

Given the complexities involved in planning for retirement, ideally a member should have access to personal financial advice.

Access to affordable advice has the potential to significantly improve a member's income in retirement. Scaled advice – including intra-fund advice – could play a role with respect to assisting members approaching and in retirement, however, there would need to be regulatory reform.

**Recommendation 8**

- The Quality of Advice Review in 2022 should examine the potential role the provision of scaled and intra-fund advice could play with respect to retirement income.

### 9.3 Assisting members to balance the retirement income objectives

The assistance to members could consist of trustees directing member to guidance materials offered by third party providers or government.

When it comes to directing members to particular products, however, any assistance provided by the trustee will need to ensure that it does not breach the prohibition on the hawking of financial products and that it complies with the requirements of the Design and Distribution Obligations regime.

## 10. Reviewing the strategy and outcomes

### 10.1 Reviewing the retirement income strategy

We support regularly reviewing the retirement income strategy.

### 10.2 Reviewing the outcomes of the retirement income strategy

When it comes to reviewing the outcomes of the retirement income strategy, in circumstances where it includes directing members to products or guidance materials offered by third-party providers or Government, the trustee may not be in a position to assess how effective this assistance has been.

Further, as the trustee will not know most of the matters which will have driven members' decisions with respect to their retirement income (such as other super balances; Age Pension eligibility, partnership status and home ownership status), it will be difficult to determine the outcomes of the retirement income strategy. By way of example, for a number of members, after careful consideration, an account-based income stream may remain a valid choice – this would not mean the retirement income strategy has not been successful.

## 11. Need for APRA guidance

It would be extremely useful if APRA were able to release draft guidance as soon as practicable, to assist trustee to develop their Retirement Income Strategy prior 1 July 2022.

| **Recommendation 9** |
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| • APRA should release draft guidance as soon as practicable to assist trustees in developing their Retirement Income Strategy prior to 1 July 2022. |

## 12. Need for ASIC guidance

In retirement members will be making financial decisions that have the potential to significantly affect their income in retirement, including possibly acquiring a product from which they are unable to exit (after the expiry of the cooling-off period).

Given that there may be considerable differences in the nature of products being offered, and the risk of unintended consequences, it is important that products are disclosed on a consistent basis to enable consumers to be able to compare products.

Accordingly, consideration should be given to developing guidance as to appropriate disclosure of retirement income products, including

- what labels can, and cannot, be used for products with particular features
- what features must be disclosed, and in what terms; and
- what assumptions can be used to underpin the disclosure.

| **Recommendation 10** |
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| • ASIC should consider developing guidance as to appropriate disclosure of retirement income products so as to mitigate the risk of unintended consequences. |

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