

18 October 2021

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Dear Adam,

COTA Australia welcomes the opportunity to comment on the Exposure Draft of the Bill to establish the Retirement Income Covenant in the SIS Act. As you know this was discussed at the recent meeting of the COTA Consumer Focused Retirement Income Roundtable at which Treasury, ASIC and APRA were present. Our comments reflect in part the discussion at the Roundtable, as well as our long held commitments.

We welcome the continued progress towards a Retirement Income Covenant with this timely release of the Exposure Draft of the legislation. We look forward to it making its way to Parliament with priority status so that it passes before any early new year election option.

There are a number of points we would like to make about the Exposure Draft Bill, the Explanatory Materials (EM), and the contextual need for other initiatives required to ensure this legislation achieves its purpose. These points repeat some of the content of our previous submissions on the Covenant and to the RIR, and also reflect discussion at the COTA Roundtable:

1. We appreciate that the draft legislation is consistent with other SIS Act covenants, and in that respect is principles based and not prescriptive on trustees. This creates a certain tension for COTA in seeking major cultural change in the superannuation industry and its members in respect of retirement income behaviours. We explore this below. However, we accept the broad industry support for the principles-based approach.
2. Given this will be the form of the legislation then guidance from APRA and ASIC on expectations regarding the implementation of the Covenant will be important, as will guidance on other related matters, such as financial advice. In our last submission we called, as did others, for APRA and ASIC draft guidance to be released alongside the Bill being introduced to Parliament. This is not commonly done (but has been) but would be helpful. In its absence we will comment below on the guidance provided by the EM.
3. With regard to the Draft Bill, we do share concerns about the complete exemption of Self-Managed Superannuation Funds (SMSFs). We note the evidence to our Roundtable by those involved with SMSF management that many are used for legacy bequests, and many others are not managed well in respect of the generation of optimum levels of retirement income. We welcome the indication that government is still considering how the Covenant can be appropriately scaled for SMSFs and hope that means that the exemption will be a temporary

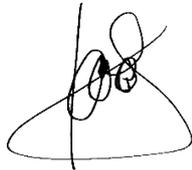
situation. If not, the misuse of SMSFs for other than retirement income purposes will be further incentivised.

4. For COTA the fundamental and key issue is the need to shift the superannuation culture to recognise and practice that retirement income must be derived from both earnings and from consumption of the capital. The super industry has at best not understood this, but more likely actively not promoted it, because it would negatively impact the volume of funds under their control if most people drew down on their capital in retirement. This would reduce the impact and influence of super funds in the Australian economy. On the other hand for retirees the shift in culture would mean they have a significantly higher income and well-being in retirement.
5. That is why we are disappointed that there is **no requirement** in the Draft Bill or even the EM for Trustees to be required to frame their members funds in terms of projected retirement income. So the provision of income projections remains an option for trustees, rather than a mandatory feature of the system. This leaves the balance of power with the funds to continue their focus on accumulation over retirement income.
6. Even in the EM this is presented in a watered down fashion. For example, in 1.13 it is stated that “trustees **may** consider assistance that could be provided during the accumulation phase”. Surely that should be “**should**” consider at the least. COTA would prefer that they be **required** to do so during the accumulation phase. Otherwise we are only toying with the key issue identified by the Retirement Income Review, even abrogating pursuit of that Review’s key messages.
7. In that respect we draw attention again to the fact that the government has not yet legislated the **purpose of the retirement income system**, as recommended by the Retirement Income Review, or to prescribe a similar purpose for compulsory superannuation. In the absence of a clear requirement on trustees as per 5. above there should be inserted into the Act a **Purpose Clause** setting out clearly that the purpose of superannuation is retirement income and that’s what trustees are all there to deliver. That would then frame the Covenant amendment more purposefully.
8. We also drew attention to the difficulty of trustees being able to access accurate and reliable data to develop their Covenants and in particular to divide their members into separate cohorts based on good data. We drew attention to the data held by Commonwealth agencies such as the ATO and DSS. This could be used, through data matching that was then deidentified, to provide funds with a more detailed profile of their membership. We were very pleased to hear that discussions are proceeding in this regard. We recognise they are complex, but it is essential that they be resolved positively within the first year of the operation of the Covenant.
9. We remain strongly of the opinion that the provision of higher quality financial information/guidance/advice is critical to the objective of this legislation. We would reiterate the points made in our earlier submission that individuals in the accumulation phase need better tools to make decisions about their retirement income potential. The trustees are best placed to

provide that, but many need more permission to do that effectively. We welcome the advice that the Treasury review of financial advice will occur in the first half of next year, and it will be vital that action on that review is prompt. We also welcome the advice that ASIC is shortly to consult on relief from some advice constraints for retirement income calculators and good faith projections. We also think the EM should encourage the use of “Wake Up” packs at (say) ages 50 and 60, and of the government’s “Life Checks” website and resources (which we think could be improved. We also think government needs to consider a service similar to the United Kingdom’s pension advisory service now known as Money Helper , similar to but more comprehensive and detailed than ASIC’s Moneysmart website - see <https://www.moneyhelper.org.uk/en/pensions-and-retirement?source=tpas#>

We look forward to further consultation on this matter but should signal to you that we reserve the option of further pursuing our key concerns in the parliamentary process.

Yours sincerely

A handwritten signature in black ink, appearing to be 'IYates', written over a large, light-colored scribble or background mark.

Ian Yates AM  
**Chief Executive**