



AUSTRALIAN INSTITUTE of  
SUPERANNUATION TRUSTEES

15 August 2018

Manager  
Consumer and Corporations Policy Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

Email: [ProductRegulation@treasury.gov.au](mailto:ProductRegulation@treasury.gov.au)

Dear Sir or Madam,

**Re: Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Power) Bill 2018**

**In brief:**

AIST repeats its conditional support for these proposals. However, the proposals cannot work unless systemic gaps in the disclosure and reporting framework are fixed. Because of these gaps, we query what evidence-based triggers will be used by ASIC to investigate particular products. Further, the proposals do not impose accountability on all institutions involved in the product manufacture and distribution chain.

AIST thanks Treasury for this consultation regarding the *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2018* ('the Bill').

AIST repeats<sup>1</sup> its conditional support for these proposals. We appreciate that these proposals are reforms needed to assist ASIC use its enforcement powers to help reduce the number of products which are not in members' best interests. We strongly support this objective. However, we are concerned that fundamentally, this additional tool will rest on a flawed disclosure and reporting framework, thereby rendering the proposals ineffective.

The proposals would provide a needed product intervention power. This would address issues with *individual* products, including Choice superannuation products. We have long advocated that the 40,000 Choice products (generally for-profit and underperforming and over-charging) are not in members' best interests. What the proposals do not address is the lack of information at *both system and product* level - consistent disclosure across MySuper and Choice (including

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<sup>1</sup> AIST (2018). *Design and Distribution Obligations and Product Intervention Power – draft Legislation*. [online] AIST. Available at: <https://tinyurl.com/y7a377vm> [Accessed 14 August 2018].

legacy products), platforms and non-platform superannuation products, and consistent reporting across MySuper and Choice products. Without these systemic issues being addressed, we believe that the product intervention powers cannot not work effectively.

Given this lack of consistent disclosure and reporting, we query what evidence-based triggers could be used by ASIC to investigate particular products. We also query the effectiveness of focusing on an individual product intervention power given the disclosure and reporting problems with the Choice sector. These problems are exacerbated by there being over 40,000 investment choices.

A more substantive way to address product proliferation and inefficiencies would be:

- To align Choice product disclosure with MySuper
- APRA to collect such disclosed data so that it may be analysed. If such data were collected, then APRA should be able to identify:
  - A lack of value to members.
  - The potential detrimental impact of various institutions using related party providers.
  - The potential detrimental impact of conflicts of interest.

Currently, insufficient data is either disclosed or reported to APRA so that suitable system or institutional analysis can be undertaken to ensure that institutions - and the products they either manufacture or distribute - are acting in members' best interests.

Given various reports and investigations (e.g. by the Financial Services Royal Commission, the Productivity Commission, and ASIC and APRA) highlight either a lack of transparency or an inability to undertake system or institutional analysis, we are concerned that these fundamental gaps in the disclosure and reporting framework remain.

Accordingly, our key concerns stated in our earlier submission remain:

- The fundamental starting point – the disclosure and reporting framework – is flawed. There are numerous and systemic legislative erosions which result in big differences in disclosure and reporting across sectors and asset classes. These erosions also mean that regulators are unable to suitably assess products either at system or institutional level.
- The Bill does not cover all the key stakeholders which create and distribute products. All stages of the intermediated models of product and distribution must be captured within the Bill. Our earlier submission outlines which entities have been exempted. These exemptions favour investment management companies and product providers which in turn provide information to platforms. These entities have been exempted from ensuring that the products they develop and sell are suitable. A lack of ownership of

products, services and indeed accountability across integrated organisations has been an ongoing focus by the Financial Services Royal Commission.

- International trends have not been followed.  
The European MiFIDII requirements include that product providers and parents are to determine ‘target markets’. AIST once again queries why these entities have been carved out from the proposals.
- The Bill needs to be considered alongside other proposals such as the member outcomes test.

Since our previous submission in February, there have been several important and relevant developments which underscore our advocacy:

#### *Productivity Commission<sup>2</sup>*

The Productivity Commission found that the substantial proliferation of investment choices in the Choice sector complicates decision making and increases fees without boosting returns. The Commission commented on the difficulty of analyzing performance given the lack of data, that an analysis by asset class was not possible, and that inconsistencies abound with how fees and costs are reported.

#### *Financial Services Royal Commission*

The Financial Services Royal Commission (FSRC) has heard numerous examples where fees and costs are not disclosed, have been disclosed in a misleading way, or have been impacted by for-profit related party transactions. These examples highlight both the need to remove the numerous erosions made to the legislative framework, as well as collect data which could help identify these problems.

#### *Regulatory Guide 97 fee and cost disclosure expert review report*

The Expert Review report<sup>3</sup> of superannuation fees and costs disclosure, undertaken by Mr Darren McShane, was issued on 24 July 2018. The report vindicates our profit-to-member sector’s longstanding concerns over the past 5 years that the disclosure regime fails members. The report agrees with our advocacy that fee and cost information is extremely difficult to find – let alone compare. The report also finds that there is a lack of a level playing field between

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<sup>2</sup>Australian Government, Productivity Commission (2018). *Superannuation Assessing Efficiency and Competitiveness, draft report*. [online] Australian Government. Available at <https://tinyurl.com/y877mcqj>; [Accessed 14 August 2018].

<sup>3</sup>McShane, D. (2018). *Review of ASIC Regulatory Guide 97: Disclosing fees and costs in PDSs and periodic statements Report to the Australian Securities and Investments Commission*. [online] ASIC. Available at: <https://tinyurl.com/y7l82sho> [Accessed 15 Aug. 2018].

superannuation and managed investment schemes, across various asset classes, and between platform and non-platform superannuation products.

We strongly urge that there is a further review of the proposals to ensure that firstly, systemic issues are reviewed, and secondly that products will be delivered and distributed in members' best interests.

For further information regarding our submission, please contact Karen Volpato, Senior Policy Advisor at [REDACTED] or at [REDACTED].

Yours sincerely,



Eva Scheerlinck  
**Chief Executive Officer**

*The Australian Institute of Superannuation Trustees is a national not-for-profit organisation whose membership consists of the trustee directors and staff of industry, corporate and public-sector funds.*

*As the principal advocate and peak representative body for the \$1.2 trillion profit-to-members superannuation sector, AIST plays a key role in policy development and is a leading provider of research.*

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