14 October 2022

Superannuation Efficiency and Performance Unit
Retirement, Advice and Investment Division
Treasury
Langton Cres
Parkes ACT 2600

By email: YFYS@treasury.gov.au

Consultation Paper – Review of Your Future, Your Super Measures

Thank you for the opportunity to provide a response to the Consultation Paper seeking feedback on unintended consequences and implementation issues from the Your Future, Your Super measures.

Rest is supportive of measures that seek to ensure that the retirement savings of Australians are well-managed in high-performing funds. Rest members tend to be younger, with lower balances, and have a higher incidence of part-time, casual and broken work patterns when compared with the members of many other funds. We therefore reflect on these measures with the perspective of working to secure the best retirement outcomes for people who may not have the same experience of the superannuation system as the 'average' Australian.

We are proud of how we have implemented the Your Future, Your Super measures, and of our record of managing our members' retirement savings for long term outcomes, with a focus on keeping fees low, consistent investment performance, and with product design that works for our members.

We support the intent of high-performance, transparency and comparability and the obligation to act in the best financial interests of members. We also support measures that prevent the creation of unintended multiple accounts through a default system that is simple for members to understand, and operationally efficient for employers.

However, we believe that there are opportunities for improvement across a number of aspects of the Your Future, Your Super reforms. In particular, adjustments to both the annual performance test methodology and consequences of failure and addressing the 'reverse onus of proof' in regulation of the best financial interest duty. Further, we believe that stapling has not had sufficient time to operate to provide significant observable consequences and would benefit from a review at a later date. The following pages provide greater detail on these matters, including recommendations for improvements.

To discuss any aspect of this submission, I invite you to contact Sarah O'Brien, General Manager, Regulatory and Technical Services directly on 0400 399 330 or via email on sarah.o'brien@rest.com.au.

Yours sincerely,

V.Doyle

Vicki Doyle
CEO

Comments on Consultation Paper – Review of Your Future, Measures

Performance test

We support the intent behind the performance assessment to ensure that only high-performing funds are permitted to manage superannuation for Australians. However, Rest continues to have significant concerns about the effects of the annual performance test, including the ongoing negative effects that the annual performance test as designed may have in distorting investment decisions, as well as the willingness of funds to invest in nation-building assets that may have long term returns that are not reflected in strong short-term performance against the benchmark.

Test methodology

Rest is of the opinion that the measurement as currently structured in the test is affecting risk taking behaviour by superannuation trustees, and that some adjustments to the test are necessary to provide sufficient scope for funds to make investment decisions with reasonable assessment of risk over the long term. The key adjustment in order to appropriately measure long term investment performance is an increase in the investment return time period, to at least ten years.

Rest members tend to be younger than industry averages, with nearly two-thirds of Rest members being under 35 years old, which means that for Rest, a considerable proportion of our members will be in the fund for over forty years. For our members, therefore, fair, long-term, sustainable investment returns are key to creating their best possible retirement outcomes.

We understand the current alignment of the time period to the development of MySuper products in 2013, however, an increase to the time period could be introdcued with a transition period similar to the transition from seven to eight years in the first two years of operation of the annual performance test.

Recommendation

- Increase the annual performance test investment return time period to at least ten years

Rest is strongly supportive of investing in 'nation-building' assets and seeks opportunities to contribute to the communities through appropriate investment, focused on delivering fair long-term returns. However, we believe the current structure of the annual performance test, particularly in regard to the unlisted infrastructure benchmark inhibits investment as outcomes may not be aligned to expectation in the test.

We believe that further consultation with superannuation funds is needed on the benchmarking of unlisted investments, in particular infrastructure assets, to appropriately benchmark these investments. The risk of maintaining measurement against indexes that may not appropriately represent the scope of superannuation fund investments is that funds may reconsider investment in these assets, as the risk of failure of the test is considerable.

Rest believes that the calculation of actual RAFE and a comparison to benchmark RAFE is an appropriate method to represent costs for members. The primary objective for any fund in delivering to its members is the long-term net returns that build retirement savings over time. It is therefore not necessary to represent other product features in a performance test of this type.

However, two amendments to the treatment of actual and benchmark RAFE are necessary to fairly provide a measure of long-term net returns, and reasonable comparison between fund performance.

Firstly, administration fees, represented by actual and benchmark RAFE, should be calculated on the historic year against the same year of investment performance, to better represent historical net performance. The current treatment of only the most recent RAFE being used to net against historic net returns is a distortion of the experience of any member in a fund. Including historic RAFE against the year of return will mean that funds that have reduced their fees over time will have this reflected in the net returns in each year, without having a distortion effect.

Secondly, the calculation of the benchmark RAFE should be amended to remove tailored, non-public offer MySuper products from the median fee comparison. These products are not representative of the broad experience of members in public offer MySuper products, as trustees are able to negotiate specific discounts based on negotiations with an employer. As such, they do not align to publicly available products, are only available to specific groups of employees, and distort the calculation of the benchmark RAFE. Alternatively, a methodology that appropriately weights the benchmark RAFE with reference the membership of MySuper products may address this distortion.

Recommendations

- Administration fees, represented by actual and benchmark RAFE, should be calculated on the historic year against the same year of investment performance, to better represent historical net performance.
- The calculation of the benchmark RAFE should be amended to remove tailored, non-public offer MySuper products from the median fee comparison.

Consequences of failure

The first two years of operation of the annual performance test have seen results in addressing underperformance by some superannuation funds. Most of the funds that failed the initial test progressed to merger or closure, and others have improved their performance to pass in year two. The funds that failed in the second year have well-progressed plans.

It is arguable that as a result of funds focusing on performance against the test, future failure of the performance test is less likely, and therefore will see a reduced number of funds not meeting the test. As a result, there is an opportunity for the management of the consequences of the test to be more tailored to the specific circumstances of a fund.

There will be circumstances where the performance in a given year does not reflect the outcomes being produced for members, either through risk adjusted returns or other shorter-term anomalies in relation to the benchmarks used or other factors to ensure alignment with community expectations, for example environmental or other factors.

Because of this, Rest continues to support a multi-step annual performance test approach for all MySuper products. We believe that there should be tiered or flexible consequences for failure of the test that reflects the circumstances of the failure, and appropriately addresses the matters that led to that result.

Options may include specific APRA oversight of the planning steps that a fund is taking to address the underperformance, or assistance to find an appropriate merger partner, if that is deemed to be the desired outcome.

At the least, modifications to the current consequences are necessary: the drafting of the advice to members of the failure should be reviewed, as the current letter has the potential to merely create fear and uncertainty, rather than drive considered action; and the default member communication method should be aligned to other communications, which is by email if the fund has an email address for the member. The cost of mailing to all members as well as communicating by email is unreasonable and prohibitive.

Recommendations

- There should be tiered or flexible consequences for failure of the test that reflects the circumstances of the failure, and appropriately addresses the matters that led to that result.
- The letter advising members of a fund failure should be reviewed, and email should be the default communication method.

Stapling

Rest continues to support the current model of stapling, as it provides stability of a member's superannuation account, in particular for people in part-time, casual, and seasonal work, and those holding multiple jobs. Rest members are more likely to be employed in these patterns of work and having a single superannuation account to which default superannuation guarantee payments are directed reduces confusion and disengagement, as well as gives the benefits of having a single account, thereby reducing fees and insurance premiums.

Approximately ten percent of workers change jobs in any given year; according to ABS data in the year to February 2022, 1.3 million people changed jobs[1]. In addition, a growing number of people are multiple job holders or in casualised work, with nearly one million people holding more than one job in June 2022[2]. Stapling arrangements for these people mean that their fund is not changed when changing employment, or having an additional employer, and this stability both encourages engagement and reduces costs.

With stapling commencing on 1 November 2021, there have only been three cycles of quarterly Superannuation Guarantee (SG) payments since commencement, and therefore we believe that insufficient time has passed to fully assess the success or unintended consequences of its introduction. In addition, the wholesale payroll integrated solution will only be available from December 2022, initially intended for July. If this element of Your Future, Your Super measures were to be assessed for change in more detail, we would recommend this be after a period of more effective data collection and assessment.

Employer experience

Conversations with our largest 300 employers suggest that they are fully progressed with implementing stapling processes and have developed digital solutions to streamline this activity. Many have improved their employee onboarding process with the introduction of stapling and are seeing benefits outside compliance with the stapling rules. In addition, some employers are seeing greater completion rates of Choice of Fund forms. Small businesses (SMEs) may still be progressing to full solutions, but we anticipate that the commencement of the payroll integrated solutions will assist with this.

Some employers have identified issues with the stapled search processes, especially for employers who are close to the 'bulk search' threshold of 100 employees. For these employers having to perform single employee searches is time-consuming and can disrupt the onboarding processes. We anticipate this will be improved by payroll integrated solutions available later in 2022.

Stapling and the performance test impacts for employers

The interaction of stapling obligations and results of the annual performance test has raised some issues for employers. Employers who wish to reassess their default arrangements following a failed result for a fund do not currently have a clear pathway on action following that result. Employers who have a default arrangement with a fund that fails the performance test, particularly for the second time, may be aware of the need to quickly find an alternative default arrangement for new employees, but it is not clear what action is available to them for existing employees.

---

[1] Australian Bureau of Statistics. (2022, February). Job mobility. ABS. https://www.abs.gov.au/statistics/labour/jobs/job-mobility/latest-release.
[2] Australian Bureau of Statistics. (2022, June). Labour Account Australia. ABS. https://www.abs.gov.au/statistics/labour/labour-accounts/labour-account-australia/latest-release.

In these circumstances, while an employer can continue to comply with the superannuation guarantee obligations by making contributions for existing employees to the fund that has failed the performance test, an employer may seek to cease that arrangement. Employers in this position are finding it difficult to clarify what actions they may take to cease those arrangements, and what information they can or should be providing to their employees as a result.

We believe there is a need to provide employers in this situation with greater clarity on the actions available to them, in order to avoid unintended breach or other consequences.

Platform-based onboarding providers

Rest has concerns about some emerging third-party HR onboarding providers who are offering solutions to employers that enable platform-based onboarding and superannuation enrolment tools. Some of these providers appear to bypass the stapling and default processes by having a pathway that offers completion of a Choice form, and if the form is not completed, then selection of one or more funds, that are neither the employee's stapled fund, or the employers default fund. We understand that in some cases the funds offered for selection provide payment to the service for listing.

Our concerns about these services include that employers may be unwittingly breaching the Choice of Fund obligations, that the service appears to be providing financial advice by offering a limited range of funds for enrolment, and that the arrangement may involve conflicted remuneration in the superannuation offer.

We recommend that Treasury consult with ASIC about these services, and consider whether appropriate protections are in place for employees and employers that may be engaging with these services.

Recommendations

- Further review consequences of stapling implementation following at least 12 months of full operation
- That Treasury consult with ASIC about third party onboarding services, and consider whether appropriate protections are in place for employees and employers that may be engaging with these services.

YourSuper comparison tool

Rest supports the principles of transparency and comparability for consumers, and that all people should have access to the right information to make informed decisions about superannuation. As a superannuation fund, our visibility of use of the tool and the subsequent decisions that consumers are making based on the tool is extremely limited, and similarly our ability to provide comments on those aspects. Our comments, therefore, are limited by these constraints.

We have concerns about the expectation that consumers are being directed to the YourSuper comparison tool to make decisions about their superannuation. The data and information is very limited, and can be very outdated. The tool is updated on 1 September with performance and fee information as at 30 June, however it is then not updated until the following year. Therefore consumers are being directed to a tool that may have information considerably out of date.

For example, if a fund issues an updated PDS with new fees in July, this will not be reflected in the YourSuper comparison tool until the September in the following year. For the intervening period, the tool will reflect the outdated information.

We recommend that it is made significantly clearer on the YourSuper comparison tool that consumers should seek updated information from the fund website before making a decision, and that an individual's circumstances may mean that further information from the fund is appropriate before making a decision.

Furthermore, we believe that funds should have the opportunity to review the data that APRA provides to the ATO for the purpose of the disclosures on the tool, to ensure accuracy against what has been reported by funds. Currently, funds have no visibility of the data that is being provided for public disclosure on their behalf, and there should be a process of review to provide assurance of accuracy and currency.

Recommendation

- Update the YourSuper comparison tool to include that consumers should seek updated information from the fund website before making a decision, and that an individual's circumstances may mean that further information from the fund is appropriate before making a decision.
- Funds should be provided the opportunity to review the data that APRA provides to the ATO for the purpose of the disclosures on the tool, to ensure accuracy against what has been reported by funds.

Best financial interests duty

Rest has fully implemented processes to meet the Best Financial Interests Duty obligations. By taking a pragmatic approach to these obligations, and building them into existing business processes, we are able to manage them effectively.

While Rest has always performed its duties and exercised its powers in the best interests of members, and did not consider the new duty to be substantially different in our primary obligations, the combined effect of the reversed onus of proof and lack of a materiality threshold on expenses did result in the implementation of additional frameworks and processes to ensure increased analysis, record keeping and governance processes. We do not believe that this has materially impacted member outcomes in the long term.

We believe, however, that the management of these obligations in the way they are expressed places greater pressure on Boards and draws them from their broader strategic role to oversight the prudential and strategic management of the fund.

We remain concerned about the nature of the 'reverse onus of proof' in demonstrating decisions and evidence to a regulator in the event that our actions are questioned. We believe this is not aligned with other regulation in financial services and places an undue burden in relation to how superannuation funds manage their obligations. Furthermore, it limits funds' ability to innovate and be responsive to changing members needs by inhibiting 'test and learn' approaches to new developments.

In addition, when combined with the 'reverse onus of proof', the lack of a materiality threshold is impractical and requires processes to manage low levels of spending that are disproportionate to impact and risk.

Recommendation

- Modify the trustee obligations in relation to the best financial interests duty such that the trustee does not carry the evidential burden of proof.
- Consider a moderate materiality threshold on expenditure subject to assessment against the duty

Opportunity for regulator guidance and 'safe harbour' provisions

In implementing administrative and governance processes to manage this reform, we have found that there is insufficient guidance to funds on how to demonstrate that a trustee has exercised those powers and duties in the best financial interests of members. Matters, for example, of what time frame is to be expected for there to be a financial benefit for an initiative, or whether benefit to a specific cohort is sufficient to demonstrate best financial interests, have been cause of extensive debate.

APRA have not provided guidance on how they expect RSEs to demonstrate how they exercise powers or duties in the best financial interests of members. We anticipate that APRA will in time review fund processes and documentation, and that as a result, APRA's expectations will be clearer. Until such time, funds will have to make their own judgements about such matters, and there may be a requirement to update these over time, and we believe that there is exposure for funds

As part of this review and any guidance that is forthcoming from APRA, we believe that it would be appropriate to develop ‘safe harbour’ provisions to provide RSEs with a level of certainty that when key actions are undertaken when exercising powers or duties, then it is reasonable to assess that an RSE has acted in the best financial interests of members.

Recommendation

- Consider the creation of ‘safe harbour’ provisions to provide guidance on exercising powers or duties in the best financial interests of members