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AUSTRALIA • NEW ZEALAND

20 June 2018

Manager, CIPRs  
Retirement Income Policy Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

Submitted via email to [superannuation@treasury.gov.au](mailto:superannuation@treasury.gov.au)

Dear Sir/Madam,

## Retirement Income Covenant Position Paper

Chartered Accountants Australia and New Zealand welcomes the invitation to make a submission on this position paper. We would be pleased to discuss any aspect of our submission.

Chartered Accountants Australia and New Zealand is a professional body comprised of over 120,000 diverse, talented and financially astute members who utilise their skills every day to make a difference for businesses the world over.

Members are known for their professional integrity, principled judgment, financial discipline and a forward-looking approach to business which contributes to the prosperity of our nations.

We focus on the education and lifelong learning of our members, and engage in advocacy and thought leadership in areas of public interest that impact the economy and domestic and international markets. We are a member of the International Federation of Accountants, and are connected globally through the 800,000-strong Global Accounting Alliance and Chartered Accountants Worldwide which brings together leading Institutes in Australia, England and Wales, Ireland, New Zealand, Scotland and South Africa to support and promote over 320,000 Chartered Accountants in more than 180 countries.

We also have a strategic alliance with the Association of Chartered Certified Accountants. The alliance represents 788,000 current and next generation accounting professionals across 181 countries and is one of the largest accounting alliances in the world providing the full range of accounting qualifications to students and business.

## Introductory Comments

Chartered Accountants ANZ believes the creation of a retirement income covenant for superannuation funds at this time is unnecessary.

For reasons outlined in this submission we believe this new covenant will add to the costs of running superannuation funds but will be of little or no practical benefit to fund members, trustees, regulators or the government.

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The superannuation sector is likely to be facing significant regulatory adjustments, possibly implemented in a short timeframe, because of recommendations of the Royal Commission into Banking, Superannuation and Financial Services, and the Productivity Commission's reports into the efficiency and competitiveness of the superannuation sector. This is not the right time to separately design and implement a Comprehensive Income Product for Retirement.

There are only so many regulatory changes the superannuation industry can reasonably deal with at any time and prioritise its policies accordingly.

## Trustee Fiduciary Duties Under General Law

A trustee of any trust has fiduciary duties towards all beneficiaries. These duties have been developed over many years, are well documented, and are able to evolve because of reasonably constant judicial review. These duties are a key reference point in most proceedings against trustees for all different types of trusts including superannuation funds. As noted below it is possible for a superannuation fund's governing rules to void some of these fiduciary duties. However in our experience such provisions are rare both in APRA regulated funds and Self-Managed Superannuation Funds (SMSFs) trust deeds.

## State/Territory Trustee Acts

We note that each Australian State and Territory has a Trustee Act that applies to the operation of all trusts including superannuation funds. Over the last decade, States and Territories worked together to bring some commonality into these provisions but each jurisdiction has tailored the final agreed terms to suit their own requirements. Typically the domicile of a trust determines which jurisdiction it falls into.

This legislation often plays an important part in any litigation involving trusts including superannuation funds especially around the appointment, dismissal and replacement of trustees.

We note that there are significant trustee obligations in all these legislative requirements which must be taken into account when running any trust. As with general law fiduciary duties it is possible to void any or all of these obligations however in our experience this is also rare.

## Super Law Trustee Covenants

The superannuation law trustee covenants have been a feature of the *Superannuation Industry (Supervision) Act* – SIS Act – since it was first enacted in late 1993.

These covenants can be traced to a joint 1992 Australian Law Reform Commission and the Companies and Securities Advisory Committee report *Collective Investments: Superannuation*. This report suggests that the covenants are intended to reflect existing trustee fiduciary duties established under the general law that we referred to above. They were inserted into the law so that the governing rules of a superannuation fund could not void the general law fiduciary duties.

In the main these obligations are neither regulated by APRA (for registrable superannuation entities) nor the ATO (for SMSFs). The regulation of these trustee covenants is via the courts, as provided in Section 55 of the SIS Act. To date there has been very little case law about the covenants.

However in our experience trustees – especially APRA regulated superannuation funds – spend a large amount of time considering their general law trust obligations, their domicile Trustee Act obligations and SIS Act covenants when making decisions.

**It is our view that a retirement income covenant is not required because these obligations and covenants fully cover the government’s proposed retirement income covenant.**

## Covenant Principles

### Retirement income strategy

We appreciate the objective in proposing that superannuation funds develop a retirement income strategy. However we believe that the development of the retirement income strategy as described in the position paper is a blurring of the line between the responsibilities of trustees and the responsibilities of the financial advice sector.

We believe the factors that the government expects trustees to consider are many of the items that financial advisers would be expected to consider when providing a retiree with personal financial advice as defined in the *Corporations Act 2001*.

We believe the existing trustee covenants – especially the best interest covenant and investment strategy covenant – adequately address the issues trustees should take into account under the proposed retirement income strategy.

As we note below we agree that superannuation fund trustees should educate their members with generic material. Trustees should be free to offer financial advice services if they have deemed this is in their member’s best interests. However trustees should not be forced to do this by legislation.

We do not believe that SMSFs should be required to draft a retirement income strategy given the direct relationship between trustees and members.

In the event that the government progresses with the requirement for trustees to develop a retirement income strategy, we suggest amendments to the proposed list:

- *Replace “maximising income for life for members” with “providing the income a member desires”*

Our rationale for this change is that some retirees want to receive a certain income which may be less than the maximum income their superannuation fund investments can generate.

Whilst trustees should seek to maximise investment returns it should be made clear that it is not necessarily in a member’s best interest to have that income paid out of the fund as it is earned.

- *Replace “managing risks that affect the stability of income, including inflation” with “managing risks that affect the stability of income, including the greater of consumer inflation or wage rises”*

The rationale for this change is that while average wages typically increase faster than consumer inflation, there are occasions when the opposite occurs (that is, consumer inflation increases faster than average wages rises). Increasing retirement income at the inflation rate in these instances would give a retiree a lower standard of living relative to the rest of the community which has benefited from average wage rises.

The government has addressed this issue for the age pension by indexing payments by the larger of consumer inflation or wage rises. Similarly superannuation fund trustees should be seeking to index, over time, retirement income payments by the larger of general wage rises or consumer inflation.

#### Engagement

We agree that superannuation fund trustees “should assist members to meet their retirement income objectives by providing guidance to help members understand and make choices about the retirement income products offered by the fund”. However we do not support trustees compulsorily being required to provide financial advice. Superannuation fund trustees should be only required to provide generic information. As noted above they may elect to offer financial advice to their members.

## Supporting Principles

We have misgivings about the current proposed design of Comprehensive Income Product for Retirement (CIPR) products and do not support legislative directives that would force trustees to offer this type of product to their members.

This position is based on our experience of similar past product offerings. It has been shown that only ‘insiders’ or individuals with high end knowledge and experience (such as financial mathematical skills, knowledge of superannuation fund products and/or investment markets) are able to understand how a particular product works and if it meets a specific member needs.

In short we do not believe this style of product aids transparency and is highly complex.

We also note that trustees of APRA regulated funds often have responsibility to manage a fund with many billions of dollars. Such trustees have the ability to decide if it is in their members’ best interests to offer a CIPR either internally within their own superannuation fund or via an arrangement with an external product provider.

In relation to SMSFs, as individual or director trustees and SMSF members are the same individuals, they should be free to choose if they wish to make these products available in their superannuation fund.

#### Restriction on product variation

We do not support the limitation of trustees only being allowed to tailor these products for up to three different cohorts of members. We appreciate that this may have been suggested to reduce product development costs for superannuation funds and reduce product variation so investors can more easily compare competing products and features. However we do not believe that these proposed limitations will help future product innovation.

#### Member Consent

We agree that superannuation fund members should be free to commence or ignore a CIPR style product.

## Future Considerations

### Lifetime Engagement

We agree that superannuation fund trustees should continually seek to engage with their members and provide generic retirement income information.

In our experience many people approach or enter retirement – especially those who are partially or fully self-funded – unprepared for what it means to be an investor. Some have difficulty adjusting to their changed circumstances of relying on a range of investments to deliver their income needs and the irregular payment of investment earnings.

### Legacy products

We fully support the ideal of appropriately dealing with the range of “old style” products. At present there are a small number of people in a range of pensions – many of which were started for Reasonable Benefit Limit purposes – such as, lifetime, term, market linked, term allocated and flexi pensions.

These “old style” products require considerable time, energy and effort to manage. We recommend that investors in these products be offered a one-off amnesty, of at least 24 months. This time is to cease their restrictive product arrangements and move any remaining monies, including any money in a non-current pension liability reserve, to another suitable product of their choice or out of the superannuation system altogether.

We do not support a compulsory requirement for people in these restricted products to transfer remaining proceeds to a CIPR. CIPRs are designed to be restrictive products. The government will need to give some consideration to how investors can move freely between different products or to another style of product such as an account based pension.

### Safe harbour

If the government decides CIPRs must be offered by superannuation fund trustees, then we believe that superannuation fund trustees should have access to a safe harbour.

However a safe harbour would not be necessary if trustees had a choice to offer CIPRs. This is because trustees would have made their own decision to make the product available and, at that time, should have considered all the benefits and constraints of offering these products.

Should you require any further information or wish to discuss the contents of this submission, please contact Tony Negline, Head of Superannuation on 02 8078 5404 or by email at [tony.negline@charteredaccountantsanz.com](mailto:tony.negline@charteredaccountantsanz.com).

Yours sincerely,



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