18 October 2021

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

By email: Superannuation@treasury.gov.au

Dear Sir/Madam,

Treasury Laws Amendment (Measures for a later sitting) Bill 2021: Retirement income covenant

TAL Life Limited (TAL) welcomes the opportunity to provide feedback on the exposure draft of the *Treasury Laws Amendment (Measures for a later sitting) Bill 2021: Retirement income covenant* (Bill).

TAL supports legislating a new covenant for inclusion in the *Superannuation Industry (Supervision) Act 1993* (Cth) (SIS Act). Obliging superannuation trustees to formulate, review and give effect to a retirement income strategy for the benefit of beneficiaries who are retired or approaching retirement will lead to improved retirement outcomes for members. It will do this through placing greater focus on assisting members to maximise their retirement income by encouraging them to spend their capital in retirement. Importantly, it will also support the better management of risks (such as longevity risks) that could negatively affect the sustainability and stability of retirement income.

TAL notes the Bill is relatively straightforward, setting out the trustee obligations and the principles they should consider when preparing a retirement income strategy. We are supportive of this approach. However, we recommend the covenant be supported by legislative clarity for trustees that in providing guidance and education to members they will not inadvertently breach personal financial advice laws.

At present, trustees rely on limited instrument relief in the Corporations Act, which is unclear and is subject to challenge. Seemingly, the scope of personal advice has been expanded through the outcomes of recent case law, which has caused trepidation within trustees to provide guidance and education to members. The current relief was designed in an era where super accumulation was the primary focus of policy, and so is limited in use for trustees to assist members on the important considerations for a retirement strategy suited to their needs.

Provision of legislative clarity well in advance of the retirement income covenant obligations commencing on 1 July 2022 will give trustees the confidence to provide more targeted and relevant guidance and education to members.

About TAL

TAL is one of Australia's leading life insurers. Together with our partners, we protect 4.5 million Australians against life risks and living risks. In 2020-21 we paid more than $2.7 billion in claims to 37,000 customers and their families. We provide life insurance cover in several different ways – through our partnerships with superannuation funds, via financial advisers, and directly to consumers through digital and other platforms.

TAL is a part of the Japan based Dai-ichi Life Group. Starting with the Dai-ichi Life Insurance Company, which was established in 1902 as Japan's first mutual insurance company, today the Dai-ichi Life Group is one of the world's largest life insurance groups. Dai-ichi Life Group is also one of the world's leading providers of retirement income products.

For further information

Should you have any questions regarding the information in this submission, or about TAL generally, we would be pleased to assist. Please contact Mr James Connors, Head of Corporate and Government Affairs, on 0484 083 208 or Mr Ashton Jones, General Manager – Investments, Retirement and Operations on 0423 277 962.

Yours sincerely

Andrew Howard
Chief Commercial Officer – Group Life & Investments
TAL Life Limited

TAL makes the following comments regarding the Bill and related explanatory memorandum.

1. Longevity protection

TAL supports the requirement expressed in section 52AA(1)(b) of the Bill for trustees to address in their retirement income strategy how they will assist beneficiaries to manage longevity risks that could negatively affect the sustainability and stability of retirement income.

While not all super members will need longevity risk protection, (for example members with high level of savings outside of super or who will rely solely on the government age pension), longevity risk management is nonetheless of critical importance. The key cohorts of members who will benefit from longevity risk protection through super are those members that have a preference for secure and sustainable income, members receiving (or likely to receive) a part age pension, and members with balances between $100,000 and $800,000[1]. Over the coming years, increasing numbers of retirees can be expected to fall into one of these categories.

Accordingly, we believe that it is crucial that trustees give serious weight to expressing in their strategies how they will assist retirees manage longevity risk. Doing so will be critical to building confidence in the overall ability of the superannuation system to manage the deaccumulation phase of superannuation, through supporting retirees maximise their retirement income and living standards by drawing down their super balance in an appropriate way, with the comfort that this will not be at the expense of them outliving their retirement savings.

To meet this need, TAL considers trustees would benefit from prudential and regulatory guidance on regulatory expectations of trustees in supporting members to manage longevity risk, including from both a solution perspective and a member experience perspective.

As it currently stands, too often retired members who are disengaged from their super or who lack the confidence to make decisions about their retirement outcomes are left stranded in their accumulation phase product, making withdrawals from time to time in order to meet expenditure needs[2]. As highlighted by the Retirement Income Review, too often members also underspend in retirement for fear of running out of money. Retirement products that offer longevity protection would give confidence to these members to spend in retirement, confident they will not outlive their savings.

Regulatory guidance could expressly encourage trustees to make available retirement income products that offer longevity risk protection along a continuum. This could range from trustees nudging or smart-defaulting certain cohorts of members to a retirement product offering base level longevity protection, through to more tailored offerings for engaged members (including members who receive personal advice).

This approach would be consistent with the cohort approach to formulation of the strategy and avoid scenarios where trustees simply add products to their approved product list (APL) in the absence of in-depth consideration of the differing member profiles unique to the fund.

2. Gathering information

Section 52(8A)(b) of the Bill requires trustees to *take reasonable steps to gather the information necessary to inform the formulation and review of the strategy*. The explanatory memorandum expands on this obligation to a degree, explaining that information should enable the forming of a broad

[1] Based on TAL's internal quantitative modelling and qualitative member testing.
[2] In part this behaviour may be driven by the nest egg positioning of superannuation. This positioning over several decades has meant that many people take a defensive mindset into the retirement phase of super and seek to preserve the capital as much as possible. For retirement income policy to deliver on its goal of maximising income in retirement, there needs to be a shift in the narrative for retirees in the role of super from providing retirement savings to providing retirement income.

understanding of beneficiaries as a group. However, we think this should be further developed in prudential guidance.

From our experience as an insurer that partners with superannuation trustees, we understand and appreciate that it can be difficult for trustees to obtain information about members who join the fund other than as a result of acting on personal financial product advice. Limited information collected through the SuperStream system, together with member disengagement, means that the information decays over time, making it difficult to rely upon for the development of a targeted retirement income strategy.

Generally, trustees will have access to broad member information only, such as age, sex and account balance. Trustees do not usually have access to other information that may otherwise have a major influence on retirement goals and strategy, such as retiree health status, partnered status, home ownership status, non-superannuation assets and income, and spending patterns, to name a few.

Reliably collecting this information at the individual level can be difficult and expensive. These difficulties could be addressed if trustees were able to access, with member consent, relevant government collected data such as Australian Taxation Office (ATO) and Department of Human Services data. Enhancing the ATO administered SuperStream system to require provision of richer member data during the accumulation phase would assist trustees develop their strategy and to meaningfully engage with members approaching retirement.

TAL notes that the roll out of the Consumer Data Right (CDR) could, over time and with member consent, help trustees to address the current data discrepancy. The CDR could assist trustees to gain streamlined access to relevant information from a wide variety of sources, adding both richness and fidelity to trustee guidance and education, and ultimately enabling the mass-customisation of retirement solutions for the needs of different member cohorts.

3. Delineating general strategy from personal advice

The explanatory memorandum states that the retirement income strategy only need express the general actions the trustee will take to assist members, and need not consider the specific circumstances of individual members. It also notes clearly that collection of member information would not, in and of itself, result in the provision of personal financial product advice.

While this is helpful, TAL believes that in the absence of legislative clarity that trustees will not breach personal financial product advice (including intra-fund advice) laws in providing guidance and education to members, trustees will approach their obligations under the covenant with some trepidation. Under the current advice framework, trustees are reliant on limited, regulator issued relief, that restricts their ability to provide members with adequate tools to assist them in making decisions on their retirement. This relief is uncertain and is subject to being overridden by a Court. This lack of legislated certainty places at risk the covenant achieving the full policy intent. For this reason, we recommend legislative clarity be provided alongside the retirement income covenant, such as through a legislated exemption or safe harbour to provide trustees with comfort that they will not inadvertently breach advice laws.

We consider that this should include support for trustees to guide members to a product, or series of products, where there is factual evidence (based on individual data and cohort-level information) that the strategy is likely to be in the member’s best interest compared to alternative options currently available through the fund, such as an account-based pension without embedded longevity protection.

In addition to legislative clarity, existing regulatory guidance on calculators and retirement estimates could be expanded in recognition of the important role these tools can play in helping members understand the options available to them. More targeted retirement online calculator tools would help members think about their superannuation as income and to see the effects of their choices over time.

We recommend legislative clarity and regulatory guidance also be designed to remove any remaining barriers to trustees innovating, evolving, or expanding their available retirement income strategies and solutions beyond an existing account-based pension product. This should empower trustees to innovate quickly with confidence and reduce the likelihood that new solutions are ineffective in achieving the fund's strategy and the policy intent of the retirement income covenant.