17/01/2019

Committee Secretary
Economics Legislation Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

By email: economics.sen@aph.gov.au

Dear Sir/Madam

Re: AustralianSuper submission on the Social Services and other Legislation Amendments (Supporting Retirement Incomes) Bill 2018 ('the Bill')

AustralianSuper welcomes the opportunity to make a submission in relation to the Senate Committee regarding this Bill. We note that this legislation was introduced into Parliament without an exposure draft being made available to the public beforehand.

About AustralianSuper

AustralianSuper is Australia's largest single superannuation fund and is run only to benefit members. We don't pay commissions to anyone to recommend us, nor do we pay dividends to shareholders. The fund has over 2.2 million members and manages over $140 billion of members' assets. Our sole focus is to provide the best possible retirement outcomes for members.

This submission focuses solely on Schedule 1 of the Bill, which proposes new means test rules for lifetime income streams.

Why is this legislation required at this time?

In summary, Schedule 1 to this Bill is but one of a series of measures supporting the Government's developing retirement income framework.

This framework envisages the development of Comprehensive Income Products for Retirement (CIPRs). The CIPRs framework is still being developed with the following outstanding items yet to be actioned by the executive government to complete this framework for implementation by industry:

- The passing of legislation for retirement income covenant designed to protect member interests in the development of retirement products.
- The disclosure regime for such products which is presently under consultation.

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- The creation of a framework that enables trustees to offer a CIPR product, which is inherently complex, without personal advice, and include measures to protect consumers at the same time.

AustralianSuper suggests that it is not the right time to impose means test treatment on limited types of retirement income products based on current products in the market. Future 'innovative' products have not been developed, pending the retirement incomes framework being fully developed by Government.

Application of the rules to future products, in particular CIPRs which may feature a combination of products to deliver a tailored holistic outcome to retirees, is uncertain. This uncertainty creates a new barrier to entry for new innovative products and the result is anti-competitive. This is a perverse outcome, given that the government's stated intention in the retirement income space is to remove barriers to innovation in the creation of retirement income products.

AustralianSuper's position is confirmed by the concerns of the Productivity Commission's Final Report released on 9th January 2018,[1] which under Recommendation 10 calls for the Government to "*reassess the benefits, costs and detailed design of the Retirement Income Covenant – including the roles of information, guidance and financial advice – and only introduce the Covenant if design imperfections (including equity impacts) can be sufficiently remediated)."*[2]

If the Productivity Commission is concerned about equity impacts and design imperfections, this should be considered first in retirement framework design, before bestowing selected products with a particular means test treatment.

Products proposed to be eligible for the specified means test treatment *must* have limited commutability and are destined to be future legacy products. As non-transferable products, they are not subject to competition. From a consumer's perspective, this reduces their rights and choices in retirement.

Further, as a superannuation trustee, we have concerns about the operation of the means testing rules and the need for a consumer to understand that they are entering into a long-term trade-off for means testing purposes (see Appendix A). AustralianSuper as a fiduciary is concerned as to application of these rules to new CIPR products which are designed to be offered by superannuation trustees to their members *without* personal advice. Traditionally, these types of products have been sold to customers directly *not* through the fiduciary overlay of superannuation. A higher duty is owed by superannuation trustees as fiduciaries than applies under contract law.

Recommendation

Given the lack of clarity on key aspects of the CIPR framework, we recommend that the retirement income framework and CIPRs design be progressed *first*, agnostic of social security treatment, and that the means testing approach be later designed and applied to retirement products on a holistic basis.

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[1] "*Superannuation: Assessing Efficiency and Competitiveness",* Productivity Commission Inquiry Report No. 91, 21 December 2018 at www.pc.gov.au at page 69
[2] Ibid

Conclusion

We request the Committee consider whether Schedule 1 of the Bill appropriately serves consumer interests and may act as a barrier to entry for innovative retirement products.

Accordingly, we suggest that this provision be excised from this Bill so that it can be more fully considered in the future when other aspects of the government's retirement income framework have been legislated and implemented.

If you have any questions of us or would like further information please do not hesitate

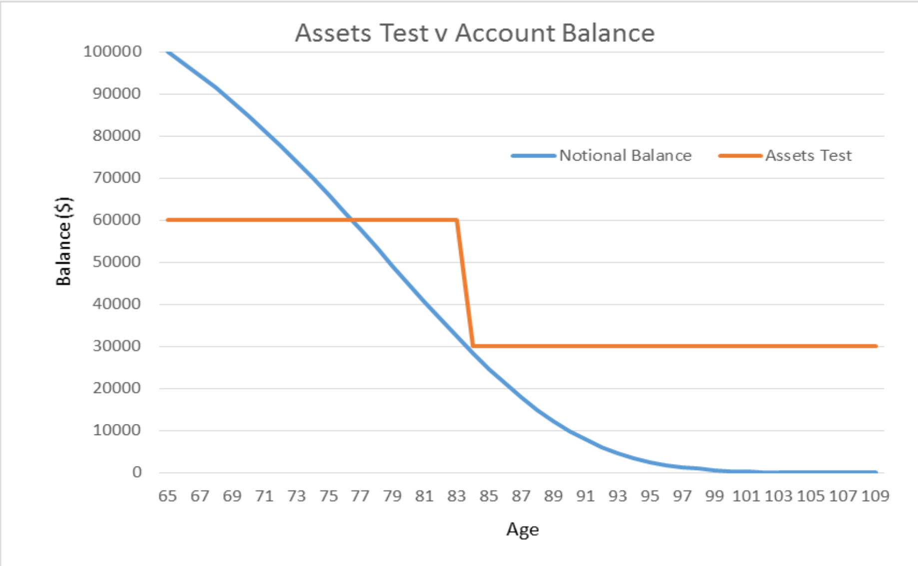
Yours sincerely

Louise du Pre-Alba
Strategic Policy Advocate

Appendix A: What are the DSS incentives and are they in members' best interests?

The proposed DSS test has been described in the explanatory memorandum as a "concession" or "incentive" to encourage the take-up of longevity products. In application however, the approach is about smoothing the DSS treatment over time, rather than providing an overall benefit.

By way of example, the purchase of a lifetime annuity for a male aged 65 (using some indicative pricing assumptions for illustrative purposes only) shows the expected value of the investment (information not generally disclosed to members in product disclosure statements), as compared to the proposed Assets Test treatment.



Upon purchasing the product, the consumer (and financial adviser) focus is on the immediate reduction in the valuation for assets testing purposes, which the consumer will view as advantageous as it enables them, on the face of it, to be eligible for higher amounts of the Government Age Pension. It is this incentive which is described as 'concessional.'

The longer-term ramifications may not be considered. Within 11 years of purchasing this product, the situation reverses, with the member then being treated for DSS purposes as having assets *greater* than the value of the asset they possess. This continues to be the case, even in later years when the consumer has likely depleted other assets and has a greater need for Government Age Pension support.