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

Dear Committee Secretariat,

Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 1) Bill 2017 and Superannuation Laws Amendment (Strengthening Trustee Arrangements) Bill 2017

AMP appreciates the opportunity to make a submission in relation to the above Bills that were introduced into Parliament on 14 September 2019.

The purpose of this submission is to highlight three key areas of concern for AMP in relation to the above Bills:

1. Cost and utility of the Annual Member Meetings,
2. Commencement date for the broader annual MySuper outcomes assessment, and
3. Definition of independent director.

1. Annual Member Meetings (AMMs)

In an environment where the Government has tasked the Productivity Commission to undertake a review of the competitiveness and efficiency of the superannuation system, it is important to consider whether these proposed reforms will enhance the efficiency of the system and achieve the objective of improving member outcomes.

While we understand that the proposed requirement appears to achieve the objective of improving member outcomes, we do not believe this is the case when balancing existing communication with superannuation members and the considerable cost.

As we advised in our submission to Treasury on 15 August 2017 on the same proposed reforms, we oppose the proposal for AMMs for the following four reasons:

1. the disproportionate cost of the member meetings
2. the illusory nature of the proposed benefits of AMMs
3. the difficulty of arranging meaningful agendas for AMMs
4. the likely low attendance at AMMs.

The cost of member meetings

AMP disagrees with the *Regulation Impact Statement* for AMMs included in the Explanatory Memorandum to the draft legislation which estimates an annual compliance cost to the entire industry of just \$14.6m.

This financial impact is significantly understated and the assumptions that have been used as outlined in paragraph 8.107 of the Explanatory Memorandum to the draft legislation are fundamentally flawed for the following reasons:

- Venue hire for physical meetings and staff costs have been considered but there does not appear to be any costs included for the online system functionality (to cater for potentially thousands of questions and answers), event coordination and reporting that will be required for online AMMs. While there is an option to hold AMMs electronically, it does not appear that there has been any assessment of the complexity and therefore significant cost that will be involved in organising, running and reporting (including answering questions and providing minutes) these meetings online for millions of fund members.
- Venue hire cost for flexible AMMs has been estimated at just \$6,000 for 3 hours. In paragraph 8.103 of the Explanatory Memorandum to the draft legislation, likely attendance at the AMMs is estimated as being up to 140,000 attendees. While we do not believe it is possible to determine at this stage how many members are likely to attend the AMMs, we know that it will cost significantly more than \$6,000 to hire a venue large enough to accommodate even these 140,000 members. The AMP Limited Annual General Meeting (AGM) venue hire cost, for example, is \$500,000, which is substantially more than the \$6,000 that has been estimated in the Regulation Impact Statement.

Likely cost of AMMs for AMP

In our submission to Treasury, we provided details on the expected cost to AMP for implementing AMMs as proposed, which was an estimated \$5.8m for AMP's seven superannuation funds that would be impacted. The AMP estimate, for one superannuation provider, is nearly half of the total estimated impact for the entire industry.

The rationale for our estimate of the cost to AMP for holding AMMs as proposed is outlined below and is consistent with the information previously provided in our submission to Treasury.

The cost of holding an AMM will be significant and there are two elements that should be considered:

- a) the cost of holding the actual meeting itself; and
- b) the cost of providing the notice and other document about the meeting to members.

In order to estimate the likely cost of AMMs to AMP, we have used the costs of running AMP Limited's AGM as a basis.

The cost of holding AMP's AGM is around \$1.3m per meeting comprising of two components:

- venue hire, event coordination, administration and reporting - \$500,000
- notifying shareholders of the AGM, including printing, mailing and processing - \$800,000.

It should be noted that for companies such as AMP with multiple superannuation Trustees, and multiple superannuation funds, it is not a matter of just holding a single meeting.

AMP has seven superannuation funds, excluding an Eligible Rollover Fund, which will require an AMM under this proposal. We also have two Trustees; AMP Superannuation Limited is the Trustee of the AMP Superannuation Savings Trust (AMP SST) and AMP Retirement Trust. National Mutual Superannuation Proprietary Limited is the Trustee for the other five funds.

There are approximately 2.7million members in the seven AMP superannuation funds and we have email addresses for approximately 47% of these members. Based on the AMP Limited AGM costs outlined above, the estimated cost of holding an AMM for these seven superannuation funds across two superannuation Trustees is as follows:

- Holding the AMMs - \$3.5m
- Mailing 1,431,000 members without email addresses (53%) - \$2.3m
- **Total cost – approximately \$5.8m**

While it may be possible to reduce this mailing cost by including the notification of the AMM with our existing mailing of annual periodic statements to members, a stand-alone mailing for notification of the AMM is likely to still be required for approximately 800,000 members who are in employer sponsored plans which have a different member reporting date compared to the fund reporting date of 30 June. Members in these plans receive their annual periodic statement at different times throughout the year, so they will need to be sent a separate notification of the AMM once the details of the AMM are available.

While we understand that paragraph 8.24 of the Explanatory Memorandum to the draft legislation indicates that the regulations will allow for notices of AMMs to be sent via electronic means, paragraph 8.23 states that *"The regulations may prescribe that the manner be the same as the manner in which the RSE licensee usually sends correspondence to or notifies a member, responsible officer, auditor or actuary"*. If we do not have email addresses for 53%, or more than 1.4 million, of our members, we will not be able to provide the notice of the AMM to these members electronically and will need to pay the cost of up to \$2.3m to provide written notice.

These estimated costs of AMMs are significant and much more substantial than what has been incorrectly estimated in the Regulation Impact Statement. It is highly likely that a portion of these costs will need to be passed on to members which is far from an improved member outcome.

Illusory nature of the benefits to members

The proposed benefits of AMMS are illusory and information proposed to be disclosed at AMMs is already available to members.

According to the Explanatory Memorandum to the draft legislation, the benefits of the AMM include making superannuation providers more accountable to consumers and enabling members to ask questions about all areas of their superannuation fund's performance and operation.

These objectives will not be achieved through an AMM. Superannuation Trustees already have significant obligations to members under the Superannuation Industry (Supervision) Act 1993 (SIS Act) including those being strengthened with this draft legislation to broaden the annual MySuper outcomes assessment. Members are currently able to ask questions of their superannuation Trustee about their superannuation fund's performance and operation. In addition, members have the capability to ask questions about their more relevant individual circumstances in terms of their own superannuation account's investment performance and insurance benefits.

We disagree with the following statement in paragraph 8.3 of the Explanatory Memorandum to the draft legislation that provides context for the AMM proposal:

"... in a large number of cases members have little or no ability to have their questions asked or answered."

This statement is entirely incorrect in respect of AMP's superannuation funds.

Our superannuation fund members can contact AMP as their superannuation fund provider, ask questions about their individual account and the overall superannuation fund and have their questions answered. We provide this service via phone, email, online and in writing. Our contact details are included in our PDSs, with annual periodic statements sent to members and other communications provided to members.

We have serious concerns about the rationale for AMMs if this is the basis for the proposal.

We believe it is also important to consider the findings of the Cooper Review in relation to AMMs, which in the Final Report states:

"In its first Issues Paper on Governance, the Panel (ie the Cooper panel) canvassed the idea of trustees holding an annual general meeting (AGM) for members of large APRA funds so that members would have a forum to exercise powers in the same way that shareholders can exercise powers with respect to directors at an AGM. While the Panel was initially somewhat attracted to this concept, it has been convinced by the overwhelming weight of submissions that the structural and logistical issues inherent in the superannuation industry make it impractical and undesirable at this time to require superannuation funds to hold AGMs."¹

AMP completely agrees with these findings included in the Cooper Review's final report.

Difficulty with agendas

Holding an AMM for a superannuation fund with an agenda that is relevant and easy to understand for individual members will be extremely difficult. The performance and operation of a superannuation fund is complex particularly taking into account the various superannuation fund structures that are available.

For example, in the AMP SST (which has a master-trust structure), there are more than 20 different products including superannuation accounts and account based pensions, multiple categories of members including employer sponsored and personal/retail members, thousands of individual investment options including MySuper options and choice investment options (where there is often no limit on the number a member can choose). In addition, there are different insurance benefits

¹ Super System Review: Final Report, page 58.

including Death, Total and Permanent Disablement (TPD) and Temporary Salary Continuance (Income Protection) cover which can be varied for individual members.

Practically, it will be impossible for ASL as Trustee of the AMP SST to conduct an AMM in which the agenda of the overall fund's performance and operation will be relevant for each of the individual members attending.

We expect the outcome for members attending an AMM will be nothing other than confusion – fund level information is not likely to be relevant to individual member accounts and circumstances. This is not at all in line with the intended objective of this legislation to improve member outcomes.

Attendance at AMMs

The attendance at AMMs is likely to be very low. There are several reasons for this.

Firstly, a significant majority of superannuation fund members will not be able to attend simply because they will be at work. By definition if someone is contributing to a super fund, they need to be working.

Secondly, the proposed AMMs are not decision making meetings, unlike an AGM of a listed company. Interested members already have the capability to seek fund performance information by phone.

Thirdly, using AMP Limited AGM attendance as a yardstick, attendance will be low. In the case of AMP only around 0.04% of our shareholders attend the AGM. We would expect that attendance at AMMs would be even lower than this.

Other comments

Should the Government decide to proceed with the AMM proposal, we believe that:

- The proposed timing of the meetings should be changed. The legislation specifies in Schedule 7, 5 paragraph 29P(4) that the AMM *“must be held within 3 months after the notice of the meeting is given in accordance with subsections (2) and (3)”*. This requirement and paragraph should be removed so that the Bill is less prescriptive but rather require that AMMs are merely held annually. Paragraph 29P(1) already satisfies this as it states *“The RSE licensee of a registrable superannuation entity must hold an annual meeting of members of the entity for each year of income of the entity.”*
- Schedule 7,5 paragraph 29P(7) excludes certain superannuation funds, such as Eligible Rollover Funds, from the AMM requirement. In addition to these exclusions, additional power should be provided to ASIC in regulations to exempt a superannuation Trustee from holding an AMM in some cases due to the unusual nature of a particular superannuation fund, for example if the fund does not hold assets.
- Schedule 7,5 paragraph 29PE(3) provides reasons for why a superannuation fund actuary is not required to answer questions at an AMM and also refers to *“any other circumstances prescribed by the regulations”*. In some superannuation funds, there will be a different actuary for each of the different employer sponsored plans in the fund. The regulations should include an additional requirement for a superannuation fund actuary to not need to disclose anything confidential, including anything commercially sensitive disclosed by the employer related to the structure of the plan and the employer's contribution and benefit obligations. Examples of such

information include:

- particular fee arrangements agreed with an employer, otherwise protected under confidentiality agreements;
 - information on different categories of members in an employer-sponsored sub-plan leading to industrial relations issues for the employer; and
 - an assessment of a proposed company change, such as a redundancy program, which would be inappropriate to be made public.
- Paragraph 8.14 of the Explanatory Memorandum to the draft legislation states that the AMM can be held by “*electronically*”. If AMMs are required, this must be technology-neutral, enabling innovation in member communication, engagement and reporting as technology evolves.

2. Commencement date for broader annual MySuper outcomes assessment

While AMP supports the rationale for this proposal, the effective date for the change should be for annual determinations made from 1 July 2018, rather than from the day after the Exposure Draft Bill receives Royal Assent as currently proposed.

There are multiple references to regulations in Schedule 1 of the draft legislation for the Annual MySuper outcomes assessment, to prescribe standards to be applied, methodology to be used and other matters prescribed for the purposes of the outcomes assessment requirements. These references suggest there will be a significant level of detail for this proposal in regulations. At the date of this submission, a draft of these regulations has still not been provided to the industry to consider in its response on these proposals. We also understand that APRA intends to consult with the industry and provide guidance on these proposals later in 2017.

It should be noted that there is a considerable amount of work involved to complete the current annual MySuper Determination of Scale assessment. For AMP’s superannuation Trustees, this process is completed over a period of 3 months to December each year. While AMP has already broadened the scope of our scale test to move in line with public statements of APRA’s intentions for trustees to consider member outcomes, a significant amount of detail has now been included in the draft legislation, and draft regulations which are yet to be provided, that Trustees will need to work through and determine what is required to comply with the proposed requirements.

Taking all of this into account, and considering that many superannuation funds like AMP will already be in the process of completing annual MySuper scale tests before the end of 2017, around the same time that the legislation may be passed and receive Royal Assent, the effective date for the proposed annual MySuper outcomes assessment should be from 1 July 2018. Trustees will need final versions of the legislation, regulations and APRA guidance before the effective date for these new requirements can commence.

3. Definition of independent director

AMP has some technical concerns regarding the proposed operation of the Superannuation Laws Amendment (Strengthening Trustee Arrangements) Bill 2017.


Section 87 sets out the circumstances where a person will not be independent from an RSE licensee. We suggest that the provisions should be clarified so that:

- A current independent director of an RSE would not be excluded from meeting the definition of independent simply because they have been a director prior to the introduction of the Bill. The

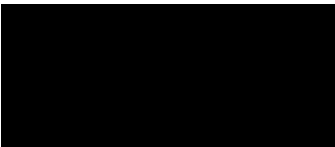
provisions around excluding people who have been directors during the 'preceding 3 years' do not appear to provide an appropriate transition period for existing independent directors.

- Trustees of multiple RSE Boards that are run jointly for the purposes of efficiency and effectiveness, are considered independent. This is a common situation where organisations may purchase another RSE (e.g. AMP and AXA) and face considerable cost and difficulty in restructuring the trustee arrangements.

We appreciate that the Bill provides APRA with the ability to declare that a person is independent even if they do not meet the requirements (section 88), which may assist in these circumstances. However, we submit that it would be better to achieve the policy objective through the Bill rather than being required to apply to APRA to overcome the uncertainty that many current independent directors would be excluded due to technical drafting.

Should you have any queries, or wish to discuss any elements of this submission, please do not hesitate to contact me on 

Yours sincerely



Alastair Kinloch