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Committee Secretariat
Senate Standing Committees on Economics
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Via: economics.sen@aph.gov.au

Dear Secretariat

Submission on Treasury Laws Amendment (Putting Members' Interests First) Bill 2019

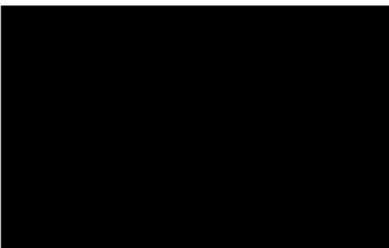
IOOF welcomes the opportunity to provide feedback on the proposed legislation designed to implement the remainder of the insurance changes originally introduced as part of the Treasury Laws Amendment (Protecting Your Superannuation Package) Bill 2018.

Overall we agree that further protecting members from inadvertent balance erosion by way of unnecessary insurance policies will help the super system deliver better retirement outcomes. However, we have concerns around the timeframe to implement these changes and specific terms used in certain areas of the Bill which have been found to be unclear within the existing Protecting Your Superannuation Package. There is potential for confusion and inefficiency for both members and trustees when considering how the insurance restrictions interact with one another.

We have also identified potential issues based on possible amendments that may be required to pass the Bill through the Senate, given proposed amendments on the original Protecting Your Superannuation Package Bill.

Our specific feedback on this Bill can be found on the following pages.

Yours sincerely



Frank Lombardo

General Manager – Client & Process



Application and implementation of changes

Commencement of amendments

The Bill as introduced proposes the amendments commence effective 1 October 2019. Given the legislation has been referred to the Senate Standing Committee on Economics and the significant development and process work required, amendments should be introduced to defer the start date to at least 1 April 2020, with all other dates adjusting accordingly.

The original Protecting Your Superannuation Package commenced very shortly after the legislation was passed. This short lead time severely restricted IOOF's (and many other providers and industry bodies) ability to communicate, educate and prepare our own staff, fund members and their advisers on the changes. As a result, IOOF received a significant number of member and adviser contacts seeking clarification and information on issues which were still being debated by the industry or in areas our staff had not received detailed training. Our experience is that with more time to communicate and educate, member and adviser confusion can be avoided leading in turn to stronger member outcomes.

Additionally, there were divergent industry views on some aspects of application of the original Protecting Your Superannuation Package, which may have been resolved if those views were articulated and debated by industry and the Regulators prior to commencement.

Deferral of the start date would also allow members much more opportunity to receive communications and make any relevant elections to maintain their insurance cover. Deferral would also provide super funds sufficient time to update their systems and processes for the changes and provide insurers an opportunity to review any premium impacts. If the amendments commence before this date, members are more likely to miss vital communications from their super funds over the Christmas period and inadvertently have their insurance cancelled. This is manifestly not in the interests of members or funds.

'Stocktake' date for low balance members

An additional concern arises with the transitional provisions for section 68AAB. The Bill currently requires trustees to retrospectively identify members based on their balance at 1 July 2019. Whilst super funds will record an end of year balance for members, not every fund records daily values for each member's account and reconstructing retrospective account values 'en masse' can be costly and time-consuming if required to be done after the date has passed.

Amending the date trustees use to identify members to be a prospective date, relative to the commencement date of the amending Bill, would reduce this issue. This is also consistent with the notice process trustees were required to follow for the inactive account insurance changes. A prospective date also allows trustees to simplify the identification of impacted members, reducing the likelihood of errors.

Elections made under transitional provisions

Section five within the application provisions for section 68AAB provides an exemption for trustees having to provide notice to a low balance member if the member, before 1 July 2019 'elects to have one or more benefits provided under the product or the products held by the member by taking out or maintaining insurance' and the only insured benefits being provided are covered by said election. An election covered by this section is also taken to be an election under section 68AAB – and by extension section 68AAC. The wording of this section could be interpreted to extend to elections made by members under section 68AAA(2) or the equivalent transitional provisions, which purely relate to cover lapsing as a result of inactivity.

Whilst from a member's perspective having a single election which covers all three situations under which their cover may not be maintained could be useful, the potential for confusion by both members and trustees is high. Further, the explanatory memoranda from the original Protecting Your Superannuation Package is clear that the election to maintain cover due to inactivity was to be treated separate to the low balance or age-based elections.

Accordingly, clarification and potential amendment is required on this point to ensure that an election under section 68AAA is either specifically included, or excluded, from being covered by this provision. This will provide a more consistent experience for members across funds and ensure trustees are clear on their obligations.

Notices for post 1 July 2019 members

Section six of the application provisions for section 68AAB require a trustee to provide a notice in writing to all members who may have a benefit provided under an insurance policy, outlining the low balance insurance changes. The measure does not provide the trustees an ability to exclude members where their account balance is in excess of \$6,000. It would appear this section is designed as a 'catch all' to ensure members who join a fund after the 'stocktake' date receive a communication with the opportunity to make an election before the changes take effect.

Given the current phrasing of the section, this would result in trustees sending notices out to many members where the member is not at risk of losing their cover as a result of the change, as their balance after the measurement date has been in excess of \$6,000 and thus insurance would be maintained under section 68AAB(1)b.

Amending the Bill to introduce a threshold test to exclude accounts in excess of \$6,000 within a short period of time of establishing their account (for example, 21 days) would reduce unnecessary and confusing member communications.

Elections must be in writing

Elections members make to maintain their insurance must be 'in writing'. The *Electronic Transactions Act 1999* (ETA) provides under section nine that where information is required to be given in writing, this can be accomplished by electronic communication, such as a phone call, where the information is able to be retrieved for later reference, and the party receiving the information consents to receiving the information in that form. However, the Electronic Transactions Regulations 2000 excludes certain Acts and regulations from being able to rely upon parts of the ETA. The SIS Act and regulations are generally excluded from the ETA by item 142 of the table in Schedule one of the regulations.

Allowing these elections to be made in line with the ETA definition of 'writing' would assist members - particularly younger members - with making a valid election and allow trustees to streamline the election process. Our clear experience is that members have a much higher response rate when offered multiple, simple methods for dealing with the fund.

Interactions between insurance provisions

When considering the combined implications of the Protecting Your Superannuation Package insurance provisions, the potential for confusing interactions becomes apparent – particularly between the inactivity provision and the proposed sections.

For example, consider a member over 25 who joins their employer plan as a MySuper member with a balance of \$5,000, however shortly thereafter the employer ceases making contributions to the fund. After 13 months, the member's balance has increased to \$6,000 so the trustee is required under section 68AA to provide certain insurances as the restriction in section 68AAC no longer applies. This would involve the trustee sending a communication to the member informing them of the insurances that have been obtained. However, after two months the trustee would then be required to send an insurance inactivity notice under Corporations Regulations 2001 7.9.44B stating the cover will be cancelled within 30 days if a contribution is not received or an inactivity election is not made.

The following options would reduce the opportunity for the above scenario to occur:

- Re-define inactivity under section 68AAA(3) to be 16 months from the earlier of the last contribution or when the trustee commenced providing a benefit by way of insurance.

- Introduce additional checks in sections 68AAB and 68AAC which continue to restrict trustees from obtaining insurance for members who are inactive for say 13 months on the day the member's balance reaches \$6,000 or they reach age 25 as relevant.

Another concern is the potential confusion by members regarding the different elections which may or may not apply across other categories. The concern with the application provisions noted above aside, members may not understand that an election based on their age or balance does not extend to inactivity.

Furthering the example above, if after 13 months the member's balance was under \$6,000 but they elected to obtain cover under section 68AAB, they would still receive their insurance inactivity notice requesting them to either make a contribution or an election. The member may falsely believe they had already made an election only a few months ago and not take any action to keep their insurance. Under current legislation this would result in the trustee ceasing their cover after the policy had been in place only three months.

It may not be possible to solve this confusion purely through changes to this Bill, however providing a smoother interaction between the different restrictions and elections could improve member outcomes.

Fixed term cover

The current restriction for trustees providing insurance to inactive accounts under section 68AAA includes a provision which protects the rights of a member under a policy that is for a 'fixed term.' This provision has been subject to much debate within the industry as fixed term is not defined, and certain interpretations could extend to this section applying to the majority of insurances offered by trustees.

According to the APRA frequently asked questions in relation to the Protecting Your Superannuation Package, the Government intends to pursue amendments to ensure the policy intent is achieved by clarifying that 'fixed term' relates to certain legacy products (amongst other clarifications). However, section 68AAB(6), proposed in this Bill, includes substantially the same wording as section 68AAA(8), meaning the same fixed term issue would be replicated for low balance accounts.

Whilst APRA's guidance is clear as to the purported *intent* of the law provides trustees some clarity, knowingly implementing legislation which would need to be subsequently amended to ensure the policy intent is achieved is not ideal. It would be beneficial to all parties if the current Bill was amended to fix this issue, as well as potentially including the relevant amendments for the existing issues.

Timeframe for testing age 25

These amendments introduce additional daily checks trustees will have to administer by checking the daily balance for each account which has never exceeded \$6,000 as well as identify members who have reached their 25th birthday. In addition to existing daily processes required for regulatory (e.g. insurance inactivity notices) and reporting (e.g. ATO member account transaction reporting) purposes, administration systems can become strained – causing additional resource strain which could be otherwise used to deliver better products and outcomes for members. Continuing to develop policies which require separate daily tests will create further pressure on trustees and administrators. As such, where daily testing does not provide a material benefit considering less frequent assessments would be appropriate.

Amending section 68AAC to consider the month in which the member turns 25 rather than their 25th birthday would allow trustees to administer this on a monthly basis without any significant impacts for member outcomes.

Previously proposed carve-out for high risk occupations

When originally introduced as part of the Protecting Your Superannuation Package, opposition parties proposed amendments which either removed these insurance conditions or provided a carve-out for prescribed occupations

which were considered higher risk. Whilst these amendments have not been adopted within this Bill, there is potential for similar amendments to be put forward during the passage of this Bill.

We note that should any carve-outs apply for members in specific occupations, trustees would require substantial additional time to implement this as specific occupation information is not always maintained for all members, particularly default members.

As an alternative to a member-level carve-out, providing APRA with a discretionary power to exempt a trustee from the low balance and under 25 insurance requirements would allow trustees to exempt their funds or specific sub-plans within the fund without having to consider each individual member's occupation. This would be significantly simpler to implement and provide a more consistent outcome for members who may move between occupations with the same employer.